Public Utilities FORTNIGHTLY

August 15, 1946

PUBLIC UTILITIES REPORTS, INC.
PUBLISHERS

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Public Utilities Fortnightly

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Pages with the Editors

WHEN the Office of Price Administration (OPA) was recently dragged back from the grave, and given a renewed lease of statutory life, we were reminded that in all this controversy over OPA, little or nothing was said about utility price controls. This probably stems from the fact that the OPA jurisdiction over utility rate adjustments is rather limited. But the very circumstance that OPA's utility jurisdiction—such as it is—was renewed with little or no argument makes rather an unique factor.

OPA's utility powers were not challenged seriously, because there has been no serious increase in utility rates. And there has been no serious increase in utility rates, because the trend has been downward for a number of years before OPA ever came into existence. This is not at all to minimize the important work which the OPA utility division accomplished through its notice-and-intervention procedure. It is simply a commentary on the true fact that utilities have "held the line," in the face of generally rising prices for almost every other major commodity and service which the general consuming public buys.

BUT the question naturally arises—just how long will utilities be able to hold this line, while their payrolls and other operating expense items increase along with other inflationary trends? The state utility commissions and Federal commissions, which have long exercised the real regulatory power over utility rates, might well ponder this question.

IT is not a question which is peculiar to the business-managed utility companies. We noted, with interest, just a few weeks ago, a statement in a Montreal publication by Dr. Thomas H. Hogg, who told a meeting of the Canadian Manufacturers Association that the Ontario Hydro-Electric Power Commission, of which he is the chairman, cannot be reasonably expected to keep on cutting rates indefinitely. Dr. Hogg added, "I am not suggesting that Ontario must look forward to an era of increased power costs, I am only emphasizing that power costs have been reduced while practically all other manufactured products have been rising." Here is a chairman of a pioneer public power agency in the North American continent openly stating that Ontario "should not expect" a continuing reduction in electric power rates.

IT may be that the new OPA will be able to stabilize prices of other commodities which operating utilities must buy, to an extent sufficient to permit utility companies to "hold the line" awhile longer. It may be that some labor leaders will see the futility of such tail-chasing tactics as increased wage demands, based on increased prices, based on increased wage demands, and so on *ad infinitum*. If so, perhaps payrolls can be stabilized in harmony with price stabilization. But if these others and more numerous forces of our general economy do not settle down to "hold the line," it is difficult to see how utility companies can be expected to hold it all by themselves for an indefinite period of rising operating costs.

IN some other respects, the reconversion period is proving even more difficult for operating utilities than in the war period itself. Scarcities of skilled personnel and operating materials continue as a heavy drag on the progress

which utility companies are trying to make in catching up with a war-born backlog of customer demand. This fact was brought home to us in a rather striking way by one of our own contributors whose article appears in this issue. It is the piece entitled "The War Isn't Over for Utilities" by LARSTON D. FARRAR, professional writer now a resident in Washington, D. C. MR. FARRAR has previously written for this publication and other well-known business magazines.

OUR original thought for an assignment, which MR. FARRAR could write, was to have him shop around among utility companies for a series of human interest stories dealing with service complaints and operating oddities. Our idea was to develop a more entertaining piece suitable for hot weather reading, as a variation from some of our more serious offerings.

BUT when our contributor had canvassed, only to a small extent, several utility companies, he soon found out that operating companies are just not in the mood to take complaints lightly. They are operating under tension just as much as they were during the war and they don't think complaints are funny. That is the spirit in which our contributor decided to write this article, and we were inclined to agree.

* * * *

A VIVID reflection of current operating difficulties in the telephone industry can be seen in the description of shortages of materials in that field contained in our "Wire and Wireless" department beginning on page 230.

THE other two feature articles in this issue are written, respectively, by JAMES H. COLLINS, who is also an experienced writer for business magazines, now a resident of Hollywood, California; and J. A. WHITLOW, a former official of the Public Service Company of Oklahoma, now a resident in Tulsa, Oklahoma.

* * * *

THERE are so many good things in our issue "coming up" for August 29th that we cannot resist the temptation of giving our readers a preview of the scheduled features for that issue.

OF special and timely interest will be the leading article by the Honorable William M. Tuck, Governor of Virginia, who will give, in an exclusive story to the FORTNIGHTLY, his own account of just how he handled and succeeded in settling the threatened statewide electric strike some weeks ago. Governor Tuck will give the reasons for the steps he took and an account of the public reaction, inside and outside Virginia.

ALSO in our issue of August 29th will be a comprehensive analysis of the importance of accounting control as an instrument of regulation from the authoritative pen of Frederick E. Benton, assistant comptroller of the Philadelphia Electric Company. A third feature will be an article on better street lighting by Ed C. Powers, head of the Street and Traffic Safety Lighting Bureau of Cleveland, Ohio.

* * * *

AMONG the important decisions preprinted from *Public Utilities Reports* in the back of this number, may be found the following:

The New York commission considers a proposed plan for intercompany foreign exchange service, under which the local company will own all lines within its franchise territory, will be responsible for making arrangements for service, and will bill and be responsible for the collection of bills. (See page 65.)

THE Securities and Exchange Commission states that the integration standards of the Public Utility Holding Company Act, applicable to the acquisition of new properties, are different from those applicable to the retention of properties in a holding company system. (See page 77.)

THE next number of this magazine will be out August 29th.

The Editors

In This Issue

PREPRINTS FROM PUBLIC UTILITIES REPORTS

Various regulatory rulings by courts and commissions reported in full text, pages 65-128, from 64 PUR(NS)

Remarkable Remarks

"There never was in the world two opinions alike."
—MONTAIGNE

JOSEPH H. BALL
U. S. Senator from Minnesota.

"If we are going to have Socialism, I want Congress to do it."

SAM GREEN
Resident, Nashville, Tennessee.

". . . no political demagogue has found a way to spend billions of dollars of public money without taking the cost out of toil and sweat of the masses."

WENDELL BERGE
Assistant Attorney General.

"If our free enterprise becomes a sham and not a reality . . . then industry will have taken a step toward public control—from which there may be no returning."

MURRAY SHIELDS
Vice president, Bank of the Manhattan Company.

"It does not make sense that people who salted away tens of billions of war bonds and bank deposits really believe all the nonsense about saving being bad, and debt being good."

WILLIAM K. JACKSON
President, U. S. Chamber of Commerce.

"We need to add to our sales blurbs about smooth-riding qualities and crystal-clear tone . . . a great deal about the system that makes such things possible. That system should no longer be taken for granted."

WALTER S. TOWER
President, American Iron & Steel Institute.

"Anyone who thinks that OPA is primarily concerned with price ceilings as a check on inflation does not read the signs correctly. Its real concern is profit control, holding stubbornly to a base which, almost from the outset, has been wholly unrelated to current costs or volume."

B. B. HICKENLOOPER
U. S. Senator from Iowa.

"The real lobby—the greatest of all time—has been organized by the OPA itself. Last year Mr. Bowles, who has been an advertising man, and his organization spent $2,500,000 of public money on the most beguiling, misleading, and extravagant propaganda trying to sell controls to the public."

HOMER E. CAPEHART
U. S. Senator from Indiana.

"I for one, should like to see the Senate of the United States as a body, by unanimous action, serve warning on all pressure groups, from wherever they may come, that we intend to uphold our oath of office by protecting the rights of minorities as well as majorities, and the organized as well as the unorganized."

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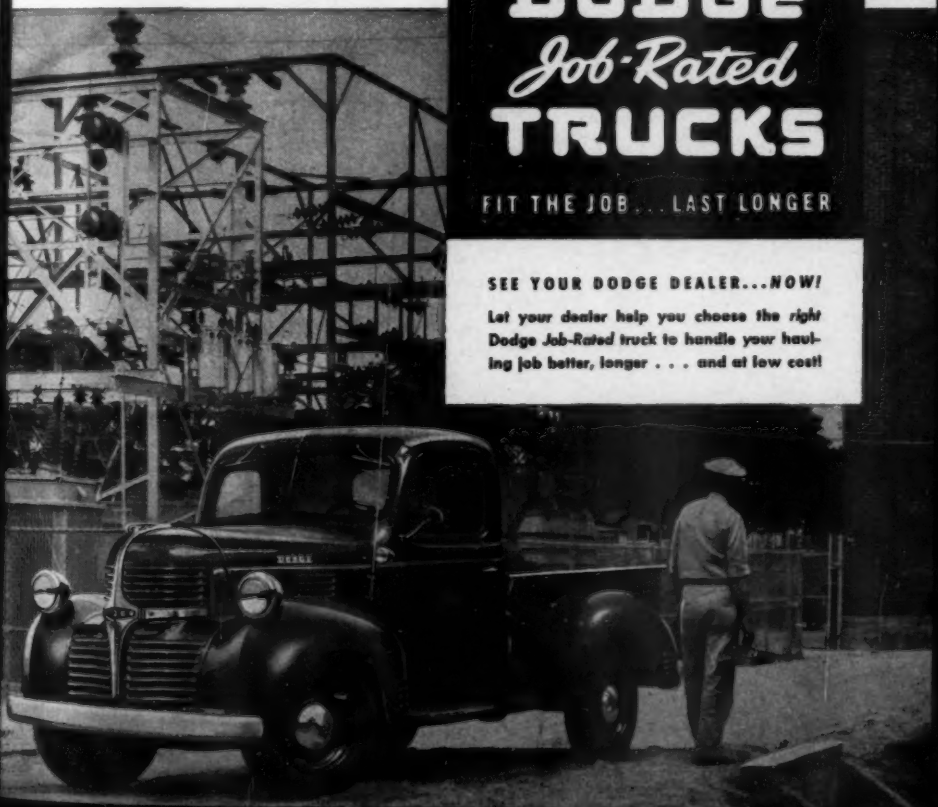

DOROTHY THOMPSON
Newspaper columnist.

"It seems to me that we are drifting into a kind of syndicalism . . . management is increasingly deprived of responsibility, while neither state nor labor assumes its responsibilities and risks, and the consumer is left unprotected."

HENNING W. PRENTIS, JR.
Past president, National Association of Manufacturers.

"If government once starts to control the economic affairs of our basic industries in times of peace, the process will inevitably have to be extended to every phase of our economic life. There will be no stopping short of the bitter end."

MARTIN W. CLEMENT
President, Pennsylvania Railroad.

"The greatest thing that our country needs today is leadership that will restore the faith of the people in themselves and bring back to them the discipline that they inherited from the founding fathers of this country and which recently has been forgotten."

JOHN W. BRICKER
Former governor of Ohio.

"Power rotates. The concentration varies. Sometimes it is big business, another time big labor, another time big intellect, big public money, or big government jobs. But whatever and wherever it is found, it is the task and high privilege of every true liberal to oppose it in the interest of man's freedom from the governing idea."

HAROLD D. SMITH
Former director, Bureau of the Budget.

"Our public construction program needs special scrutiny. There is a very grave danger that we will arrive at a premature peak in public works. The point which I made earlier—that we cannot have increased public services at this time without conflicting with the private production of civilian goods—is particularly true in the construction of public works."

ALBERT J. ENGEL
U. S. Representative from Michigan.

"We cannot spend a billion or a billion and a half dollars a year for rivers and harbors and flood-control and irrigation-reclamation projects in view of the condition of the national finances. We are confronted with a $30,000,000,000 annual budget to meet our financial obligations including the needs of the veterans and the amount required to finance our national debt."

EDITORIAL STATEMENT
The New York Times.

"Compulsory arbitration is a step toward a regimented economy. Experience has shown also that, in its early stages at least, it is in practice merely a one-sided compulsion. It falls upon the employers, whose plants are seized. No really corresponding penalties are placed on unions, which have successfully rejected government awards time and again, so that government agencies have been forced to make new decisions more to their liking. This one-sided process cannot go on indefinitely without its becoming impossible for a private enterprise system to operate."

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THE ELECTRIC STORAGE BATTERY COMPANY, Philadelphia 32
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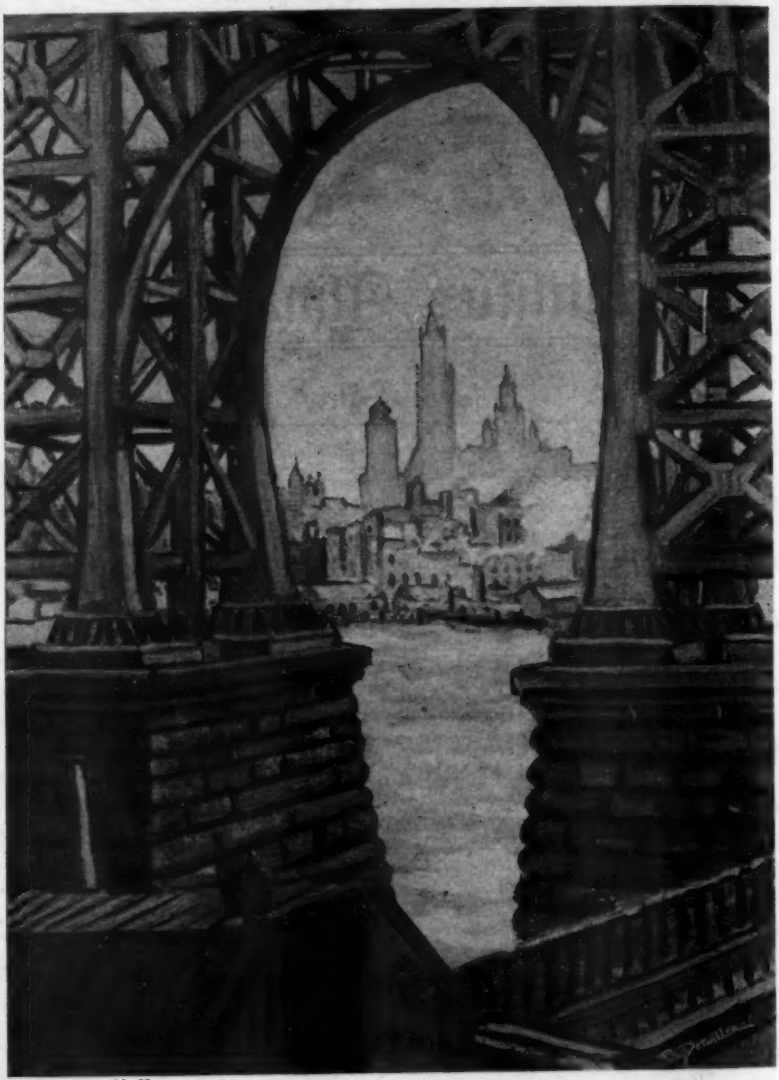
Utilities Almanack

August

15	Th	¶ *Statewide meeting of REA co-ops will be held, Casper, Wyo., Sept. 3–4, 1946.*
16	F	¶ *Statewide meeting of REA co-ops will be held, Springfield, Ill., Sept. 4–6, 1946.*
17	Sa	¶ *Rocky Mountain Electrical League will hold annual convention, Estes Park, Colo., Sept. 5–7, 1946.*
18	S	¶ *American Water Works Association, Southeastern Section, will hold meeting, Sept. 9–11, 1946.*
19	M	¶ *Appalachian Gas Measurement Short Course will be conducted at West Virginia University, Morgantown, W. Va., Sept. 9–11, 1946.*
20	Tu	¶ *Pacific Coast Gas Association will hold annual convention, San Francisco, Cal., Sept. 10–12, 1946.*
21	W	¶ *South Dakota Telephone Association will hold annual convention, Sioux Falls, S. D., Sept. 11, 12, 1946.*
22	Th	¶ *American Water Works Association, Western Pennsylvania Section, will hold meeting, Sept. 12, 13, 1946.*
23	F	¶ *Midwest Industrial Gas Council will hold meeting, Minneapolis, Minn., Sept. 12, 13, 1946.*
24	Sa	¶ *American Water Works Association, Rocky Mountain Section, will hold meeting, Sept. 12, 13, 1946.*
25	S	¶ *Michigan Independent Telephone Association annual convention will be held, Lansing, Mich., Sept. 18, 19, 1946.*
26	M	¶ *American Water Works Association, Michigan Section, will hold meeting, Sept. 18–20, 1946.*
27	Tu	¶ *Illuminating Engineering Society will hold national convention, Quebec, Canada, Sept. 18–21, 1946.*
28	W	¶ *Indiana Electric Association will hold meeting, French Lick, Ind., Sept. 25–27, 1946.*



Elsie Hafner, N. Y.

Keyhole to a City

by

FREDERICK K. DETWILLER

Public Utilities
FORTNIGHTLY

VOL. XXXVIII, No. 4 AUGUST 15, 1946

Regulation by Slide Rule

It is the engineer and technician who settle most cases for the California Railroad Commission—Because, thirty-five years ago, stormy Hiram Johnson drew up laws that make it obligatory to settle cases out of court.

BY JAMES H. COLLINS

WHEN Hiram Johnson died in Washington a few months back, a feeble oldster of seventy-eight, the newspapers reviewed his career as a "stormy petrel."

And Californians recited an old article of their political faith:

"If Hiram Johnson had lived to be a hundred and seventy-eight, and had wanted to stay in the Senate, we'd have reëlected him, over and over again."

Because, Californians loved Hiram Johnson for what he had done, and in his old age never forgot, and told their sons and daughters never to forget.

Likewise, all the Iowans and "Okies" who came to swell the state's population during Johnson's career—up from less than three millions to around eight—were indoctrinated with this article of political faith. Many of them had vague ideas as to just what it was Senator Johnson had done—but they always voted for him.

Nationally, he was famous for his opposition to the League of Nations and other outstanding measures.

But, in California, it was his fight against graft in San Francisco and his reforms as governor, and most of all, his fight against the Southern Pacific Railroad.

This country is never without its strong men in power, its giddy labor

leaders, prohibitionists, abolitionists, and what not, and, in the early days of this century, it was the railroaders who cracked the whip until they learned better.

In California, communities were developing and had their ideas about the directions in which they wanted to grow while the railroaders had other ideas, and there were battles, and Hiram Johnson headed a great reform movement in which the "Ol' Debble" was the railroad.

Today, some of the California community builders might welcome such a tangible foe because, then, citizens rallied with their dollars, and votes, and organization work, where today, the "cause" is often abstract, hard to picture clearly and stir up fighting emotions.

Well, as governor, Johnson was associated with a lot of new laws that were regarded as dangerously radical at that time. Workmen's compensation, and regulation of working hours for women, and the "blue-sky" law that was to project the sucker against the swindler, and more.

And one of the reform laws was the Public Utilities Act of 1911, which enlarged the California Railroad Commission, and gave it more powers. State regulation of utilities was then in the category of radical things, and did its share toward frightening the everlasting daylight out of the conservative citizenry.

It might be thought that, with power to pass almost any kind of law that Governor Johnson wanted to draw up, and with the railroad kings all around, asking—"What are you going to do about it?"—that new act of 1911 would begin by clamping the railroad monarchs in jail, and then proceed to run their properties with an iron hand.

Nothing of the kind!

"Stormy petrel" he might be in fighting for a cause, but when it came to drafting the enabling laws, Hiram Johnson was constructive. Most of the reforms that he pioneered in California, and made law, have been adopted in other states, and are regarded as standard procedure.

For thirty-five years, the California Railroad Commission has been highly regarded by the public in whose interest it was designed, and also by utility executives and the attorneys who practice before it.

Its character was determined by the 1911 law, plus the virile and competent leadership of the first president of the commission, John M. ("Jack") Eshleman, who set up its basic machinery.

One of Eshleman's first steps was the promulgation of rules of procedure in conducting cases before the commission.

And the chief end sought was elimination of the "law's delay," in the form of demurrers and pleas for stays. Also, the freeing of commission procedure from the rules of evidence that govern court actions.

"A postage stamp starts a case," is a commission axiom.

Somewhere, a customer of a utility company has reason to think his gas bill is too high, or that his electric meter is fast.

Simply writing the facts in a letter to the commission constitutes an "informal" complaint, and the commission has been brought into being to deal with such matters by ascertaining

the technical facts and making a decision. Such a complaint gets just as much attention as the "formal" one brought by a municipality through its officials.

What the Johnson administration did in California regulation was to review the hits and misses of regulation for nearly sixty years before, and get ready for the heavier load that was coming the next decade or two.

California regulation goes back almost to the gold discovery, for in the piping times of 1853 the legislature passed a law to regulate railroads. If any! It was made unlawful for a railroad to charge more than 60 cents a mile for passengers, or more than 20 cents per ton mile for freight.

Those really were the days of gold because, at such rates, a passenger would have paid about $250 to ride from San Francisco to Los Angeles, and $70 for a ton of freight—provided there had been a railroad, which was not the case until the 1870's. In the California boosting spirit, the lawmakers might have been, not regulating, but bidding for railroads!

It was not any too certain that such rules could be enforced in this country because Congress did not begin the Federal legislation that regulated railroads until 1862, and before the Interstate Commerce Act of 1887, there were various skirmishes between states and their free and enterprising citizens over regulation, typified in the famous Illinois "elevator cases" in 1872.

Munn and Scott, warehousemen, did not need anybody to tell them how to run their business, and when the state, in 1871, passed a law requiring the warehouseman to take out a license, observe legal rates, and give a bond, Munn and Scott ignored it. They were prosecuted in 1872, found guilty of unlawfully transacting business, and fined; appealed to the Illinois Supreme Court on the ground that the law was repugnant to the Fourteenth Amendment of the Constitution—and lost their case.

That settled some things but, meanwhile, California had been experimenting with railroad regulation, the only kind there was at that early period. By 1876, the state had three commissioners who could decide where any steam railroad built its station, an important point then, for real estate booms were often based on the building of a railroad station in Anyville, by-passing Beetown. Money changed hands, land was bought before the news got around—a town without the railroad was dead before being born.

These commissioners also had authority to locate sidetracks for loading the farmer's produce, and railroad switches—but had somehow lost their authority over rates except for a limited range of cases originating on complaints.

¶ "California *regulation goes back almost to the gold discovery, for in the piping times of 1853 the legislature passed a law to regulate railroads. If any! It was made unlawful for a railroad to charge more than 60 cents a mile for passengers, or more than 20 cents per ton mile for freight.*"

In 1878, a single commissioner was substituted and, then, until Hiram Johnson's day, there was little basic change.

The "modern era" in regulation began in 1907, when New York, Wisconsin, and also Georgia enlarged their scope to take in telephone, telegraph, electric, water, gas, and other companies now legally declared public utilities and regulated in the public interest.

Hard to believe today, this was an era of much agitation against the growing powers of the state with what seemed to be drastic new laws regulating food—it was the day of "Teddy" Roosevelt.

In 1909, California increased the salaries of her commissioners from $4,000 to $6,000—people were beginning to complain about the cost of living, never dreaming what was just ahead in the first World War!

Then, in the act of 1911, Governor Johnson and the legislature brought the whole range of utilities, up to then, under regulation, with authority over rates, finances, accounting, character of service, and so on. Up to that time, the commission had had authority only over rates of railroads and express companies.

For guidance in drafting the new law, the commission sent its attorney on a tour of a dozen states which were conceded to have the most advanced regulatory laws, and the data he brought back was most useful.

The old commission of three members had been elected. The new commission of five members was appointed by the governor for 6-year terms, but staggered at 2-year intervals, so that the majority never changed at one time—or the commission could not be "packed." The commission elected one of its members as president.

The new commission got an appropriation to employ a larger staff, chiefly of technicians, because it was seen that regulation was largely a fact-finding business.

For regulatory purposes, California is practically two states, and the commission began maintaining offices in San Francisco and Los Angeles. Headquarters were located in San Francisco by the original law, and today about 3 in 4 of the 350 employees work there.

When this law was passed, the United States had fewer than one million automobiles and motor trucks; the modern highway systems were still a-planning; and the commission had no automobile cases to decide.

But in 1914, that changed dramatically, when a Long Beach man began cruising the streets in a 5-passenger car, with a sign saying that passengers were carried, fare 5 cents. "Jitney" is the Negro word for a nickel, and a Los Angeles reporter nicknamed the new conveyance that.

Probably the name as much as the idea caused jitneys to spring up all over California, and then the nation. Until that day, the only public carrier autos had been taxicabs and sight-seeing busses. Los Angeles had its first jitney bus by June, 1914. San Francisco granted permits to jitneys at the rate of two or three dozen daily and, by January, 1915, had more than five hundred of them. In only one California city, Berkeley, was the jitney prohibited.

By March, that year, California had 2,500, and the United States 17,000.

Location of Railroad Stations

"By 1876, the state [of California] had three commissioners who could decide where any steam railroad built its station, an important point then, for real estate booms were often based on the building of a railroad station in Anyville, by-passing Beetown. Money changed hands, land was bought before the news got around—a town without the railroad was dead before being born."

California was building modern highways and as fast as they were opened up the interurban jitney appeared.

The thing grew because times were slack and, beginning in 1913, there was an oversupply of secondhand cars. American free enterprise did the rest, and presently the railroad commission was being urged by the railroads and street railways to regulate this alarming competition.

The commission decided that it lacked legal powers to regulate automobiles under the 1911 act, and presently the railroads took the point into the courts and got a California Supreme Court decision ruling that the commission lacked this authority.

However, in 1917, the legislature gave it supervision over rates, service, safety, finances, and other details of automobile carriers.

Meanwhile, the jitney regulated itself to a large extent because the novelty wore off; the jitney cars got shabbier and shabbier, and many jitneymen discovered that permanent competition with streetcars and interurban railroad lines was not the easy racket they had supposed. Many dropped out of the business when their rattletrap autos deteriorated.

But others, the few who had genuine business ability, got capital, bought new motor stages and trucks, and became auto carriers with regular routes and rates authorized by the railroad commission.

Unless they had established "grandfather rights."

In passing a new law like that of 1917, giving the commission authority to license such a new type of carrier, those carriers already established were given the right to continue without a license, or got a license without showing need and necessity. This was

the "grandfather right," worth little to the operator unable to finance himself, and worth a good deal to the one who could build a regular auto carrier system upon it.

From Hiram Johnson's day the basic policy of the California Railroad Commission has been to settle everything possible out of court.

For that reason, its staff is made up largely of technicians, and its instinctive attack on every problem is a technical one.

Engineers make up the largest number—about sixty-five. Rate experts, field investigators, accountants, reporters, transcribers, and statistical and office workers are mainly busy on fact-finding, fact-analysis, and fact-interpretation jobs.

Fewer than a dozen attorneys are employed and, while as many as four out of the five commissioners have been attorneys, at present there are only two, and L. Harold Anderson, president of the commission, is an engineer.

Besides steam railroads, electric interurban railroads, water carriers, auto stage and truck operators, telephone, telegraph, and water companies, the commission has authority over warehousemen, toll bridge companies, car loaders and forwarders, and such secondary utilities.

FUNDAMENTALLY, the commission is dealing with the same kind of disputes that make lawsuits. The plaintiff A is convinced that the utility corporation B has done him dirt on his gas bill and is all steamed up about it, and wants the commission to protect him and punish the heartless corporation.

These "postage stamp" cases are often trivial and hardly ever deal with anything more than customer grievances—one customer's ill will toward one utility company. They settle no broad issues—and yet, the commission has always regarded them as important.

For they give the individual citizen a way to deal with big corporations, and get action on his grievance.

Postage stamp clients seldom present any evidence—of the customer—he believes his gas meter is fast or his electric light bill too high. An investigator goes out in the field to get the facts.

The facts may show the customer to be wrong.

A customer complained about a sudden, unwarranted rise in the family gas bill, and the situation was investigated. By great good luck, in the servant shortage, a Filipino house boy had lately been hired. The family did not know that Filipinos love hot baths. This house boy had been taking a half dozen daily, burning up the gas.

In another servant situation, the new Negro cook kept the kitchen "air conditioned" by leaving the refrigerator door open during the day. Efficient—but rather expensive.

INFORMAL cases undoubtedly maintain better public relations for utility companies because the public knows that there is a way to get action on them and is constantly hearing about their settlement.

Do they tend to decrease in number as the years go by? Not noticeably. There are always several hundred every year.

But these cases have undoubtedly done much to give the commission a reputation for fairness and efficiency.

And they do furnish comic relief.

Formal proceedings are divided into "applications" and "cases."

An "application" is something like the request of a utility company to change rates, enter or abandon territory, create grade crossings, issue new securities, or do a hundred different things necessary in its operations.

A "case" is started by a formal complaint filed against a utility company. Citizens of a community may file through their public officials and the commission may also start a case.

At one side of the entrance to the Los Angeles offices, in the California state building, there is a small room that few visitors notice. Always locked, it might hold sixty or seventy people —or a hundred—with New York subway squeeze.

"Court Room" is painted on the door, and there is a duplicate in San Francisco. Neither room is much used because so many of the commission's cases are settled out of court. Public hearings are numerous but usually take place in board rooms, conference rooms, and other quarters in the locality that is interested.

CASES are not conducted as trials. They start with a complainant and a defendant, but from that point, everybody studiously works to keep out of court.

The rules of evidence need not be applied to proceedings under the 1911 law. No informality of procedure can invalidate any decision made by the commission. And only the California Supreme Court has authority to review, revise, correct, or annul its decisions.

It is true that one famous case before the commission ran twenty-five years!

In its early stages, one of the attorneys predicted that his son would grow up, finish college, and practice in that action—which literally came true.

This was the famous action that compelled the railroads entering Los Angeles to build a union station, and the commission came in because grade crossings entered in. It started with a complaint in 1914 and, through many delays mainly due to interstate aspects, lasted until 1939 when the railroads built the station.

But cases are so largely technical that the first step is to seek facts, and most of the personnel is made up of specialists in four departments:

1. Transportation
2. Public Utilities
3. Finance and Accounts
4. Legal

TRANSPORTATION has jurisdiction over carriers—steam and electric railroads, motor trucks and stages, ferry boats, vessels plying on inland and coastal wates; also toll bridges, wharfingers, forwarders, warehouse-

¶ "THE *'modern era' in regulation began in 1907, when New York, Wisconsin, and also Georgia enlarged their scope to take in telephone, telegraph, electric, water, gas, and other companies now legally declared public utilities and regulated in the public interest.*"

men, express companies, and like services related to carriers.

This department, in turn, is divided into four divisions—engineering, truck and stage, rate, and investigation.

Engineering makes the surveys and investigations necessary in such matters as grade crossings, abandonments, new rights of way, factory sidetracks.

But not if the survey can be eliminated! A new factory asks for sidetrack. The public must be protected if streets are to be crossed. How many persons and what interests are opposed to that sidetrack?

The commission gives public notice and, at the end of thirty days, if no opposition appears, approves the sidetrack. This eliminates nearly half the cases in which engineering surveys were once made.

Truck and stage practice has the rapidly changing highway carrier picture to deal with, and handles applications for new routes, abandonments, rates, service—at the lower end of its spectrum, there are criminal proceedings against "wildcat" operators.

The rate division is always busy with questions of tariffs too high (protests the public) or too low (say the carriers). Much statistical material has to be sought and analyzed along with that presented by the interested parties. And the commission is constantly seeking stability, some general level for rates that will be reasonable in most cases.

INVESTIGATION is another division that works to settle things out of court. Instead of waiting for the due course of events to develop rate and service discrepancies and from that develop cases, the division makes regular inspections of carriers' records and puts yardsticks on their services. This reveals overcharges and unsatisfactory service almost as soon as they appear and gives opportunity for early correction. The investigators also disclose undercharges. In the heat of competition, motor carriers are often tempted to shade the freight rate to get the business. When such practices are found, the carrier has the option of going out and collecting the undercharge from his customer.

In the department that deals with utility companies, there are divisions that handle special kinds of business in the same way, by regular inspections, research, valuations, statistical studies.

California utility companies have, for several years, been supervised by a "continuous investigation" plan that has done much to stabilize rates on general principles.

Fourteen major groups of utilities are required to make detailed monthly reports on matters that the utility department has found it well to keep track of. Upon these reports, broken down and analyzed, as well as information obtained by yearly investigations, the commission is kept informed of basic trends in operating revenues, costs, taxes, and the like. Long before complaints would be likely to materialize, anything out of line will be discovered and reported to the company that is out of step.

THE department of finances and accounts has supervision over utility finances, passes upon new issues of securities, and likewise keeps its standard records, and makes its periodical investigations to determine how much capital may be needed for a given kind of company.

Regulation of All Utilities

"... in the act of 1911, Governor Johnson [of California] and the legislature brought the whole range of utilities, up to then, under regulation, with authority over rates, finances, accounting, character of service, and so on. Up to that time, the commission had had authority only over rates of railroads and express companies."

The legal department is smallest of all. It conducts litigation where the case does go to court. But out of the thousands of cases, large and small, presented to the commission every year, the number that reach court can be counted in dozens. This department advises on legal aspects of cases and thus keeps many out of court.

At the last count, there were ten lawyers on the technical staff, contrasted with sixty-odd engineers.

One of the most interesting divisions, with all its work out of court, is that dealing with safety and accident prevention.

Its technicians are constantly engaged in work like measuring track clearances, experimenting with chemical treatments to keep down weeds on railroad rights of way, inspecting lumber on arrival at freight yards to tabulate shifting of load, and ordering the elimination of accident hazards at points where passengers board busses.

THOUSANDS of accident reports are analyzed every year and essential factors tabulated to disclose trends. Hundreds of accidents are investigated on the scene. Out of it all emerges what always appears—the fact that most accidents are caused by trivial things, little details overlooked because not considered important.

Persistently seeking yardsticks to simplify regulation and keep down its cost, the commission will never reduce regulation to a cut-and-dried system.

For its business, like all others, changes with the times. Just when everything might be crystallized in a system, something like the "jitney" episode would come along.

Each year brings its changes and new cases come with every fluctuation in the general prosperity of the country.

At the moment there is a flood of new motor truck operators seeking permits, most of them veterans who per-

haps learned to drive a truck in the Army and think it most logical to buy a truck, get a route, and start in business for themselves.

California is spacious, admits having the largest and best highway system in the world, and has innumerable requirements for truck and stage services of many kinds, big interstate lines, little town lines, orange belt lines, chicken feed routes, etc.

If some way could be found to assign every 1946 applicant a route, even if it were necessary to double the area of the state to get everybody in, then before 1947 dawned, the railroad commission would be flooded with applications to abandon. The new operators would be rushing out faster than they are now trying to rush in.

And for "out," a permit is also needed.

More than one expert on the commission, who has lived with the motor-truck and stage problems almost since "jitney" days, could give the "vet" some good advice:

"Why do you want to get into this business, as an owner, gambling all your capital, when it is lining up for a battle royal? Instead of mixing in the biggest elimination contest of all time, why not just land a trucking job and learn the business? Go down to the docks. That's where most of the trucking money is made and lost. Find out how things are done by the fellows who succeed—and also by those who fail. Then, in a couple of years, you will have three options: First, buy out a discouraged operator; second, land a better trucking job on your experience; third, stay out of trucking altogether; get into something you can do better."

War brought tremendous changes in the commission's activities, and an increase of cases to be handled with a staff that was constantly being nibbled at like every other civilian organization.

For example, war made enormous factories blossom where small ones had been, or none at all, and thousands of new workers had to be provided with homes, water, gas, transportation, goods coming as freight.

The vast military installations in California for training and supplying the Pacific theatre, raised other problems as acute.

Streetcar and bus lines had to be operated under shortages of vehicles, materials, and labor, and the accident hazard increased.

The demands for water, electricity, and natural gas were so great and unexpected that it became necessary to appraise the state's whole resources and to sit down with the military, and apportion the supplies at critical points, and to sanction the emergency building of new supply lines.

The handling of these problems showed the commission to definite advantage because they were engineering and statistical problems—not legal.

"I'd give a hundred agitators for one engineer," said Lenin, when his agitators had seized Russia's government.

The California Railroad Commission had the engineers!

And has had them from Hiram Johnson's day.

Living in California, you are constantly reading about regulatory proceedings that take the form of litigation. Complaints are reported; the commission issues orders to appear and

show cause; newspapers regard the cases as conflicts; great victories are apparently won by the public when the commission decides against utility corporations, etc.

Conflict makes the best news. It is perhaps an advantage to the commission to have it appear that public utility regulation is a perpetual battle. That keeps the safety value in the public eye.

But the fact is that most of the conflict stopped thirty-five years ago, when stormy Hiram Johnson was elected governor and laid down the law for this body.

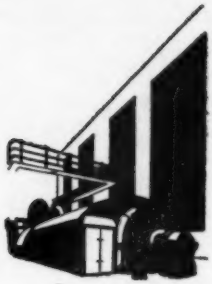
He laid down as little law as possible and put all the emphasis on settling things out of court.

Minnie the Mysterious

"In addition to his normal worries and responsibilities, the directory director (of the New York Telephone Company) is beset by what is known to his trade as telephone book fans, people who stay home and try to find freaks, oddities, and errors among the myriad names and numbers. The worst case of this occurred a few years ago when sardonic customers began calling up about Minnie Smith. For a while it looked as if Minnie Smith was destined to go down in history as one of the directory folks' worst snafus. For some fantastic reason Minnie Smith had been listed not once, but 10 times. All ten Minnies were to be found at the same address but each had a separate phone number. For days the name of Minnie haunted everyone who had any responsibility for publishing the book. It also began to give the screaming meemies to District Attorney Tom Dewey, who was informed about it on an average of twice a day by telephone book snoopers.

"Two cloak-and-dagger men from the DA's office finally went up to investigate Smith, Minnie. They found her to be a respectable married lady with 10 furnished rooms, each equipped with one boarder and one telephone. Since there was quite a turnover in boarders in those days, all telephones had been listed under Minnie's name. The paper conservation drive finally forced the curtailment of nine Minnie Smiths."

—Leslie Lieber,
Writing in "This Week."



The War Isn't Over for Utilities

Materials and skilled labor shortages, and other war-born operating problems, still bedevil the footsteps of the nation's public utility companies.

By LARSTON D. FARRAR

THIS started out to be a funny piece. It honestly did. The author got a bright idea that, with all the stress and strain of the war's end and the reconversion period—the atmosphere might be just right for something on the brighter side. From the utility angle, he asked himself, why not drop around to some public utility companies and ask them about the latest funny stories to come in through the complaint desks and field personnel? What were the strange requests, screw-ball developments, etc.?

This writer had heard about the old lady in the Georgetown section of Washington who piled bricks on top of her gas meter for years under the weird impression that it slowed down the recording mechanism. He had heard about the bride in Rochester, New York, some years ago, who complained that her refrigerator was making ice cubes "too fast" because she thought she had to remove the trays as fast as the ice cubes were formed. Then there's the story of the nice but lonesome old man in Baltimore who insisted on the meterman having a hot sandwich and coffee every trip—an event he prepared for with almost religious expectation.

How about the dozens of new telephone gags which must have developed during the war? Shucks, said this writer to himself, there ought to be a lot more good stuff like that, if a fellow would just dig around.

The managing editor of this publication was interested but skeptical. "See what you can do," he said, "there might be something there." And so this writer took off on a casual mission to several cities, dropped in on complaint departments, meter supervisors, and public relations officials of about a half-dozen utilities, with the idea of ferreting out some humor for the entertainment of our readers.

THE result was so negative that it makes a story in itself—a very "unfunny story." Here is the gist of

just one day's experience. Another day devoted to the same line of investigation produced about the same results—nothing. Generally speaking, humor in utilities is becoming about as extinct as the Roosevelt influence in the Truman cabinet.

FIRST, I went around to the telephone company. There, I figured, I could find some good jokes that folks try to pull on the operators, or vice versa, and while there may be such, nobody at the telephone company is laughing. Every time I mentioned the word humor, somebody would say: "There's nothing funny about this business today. There used to be, and there may be again, but right now this is the most serious business you can find."

"Humor?" the public relations director repeated, looking at me as if I were a kind of Benedict Arnold. "Our customers are crying their heads off for service—and rightly—and we are confronted with every kind of shortage you can imagine.

"There's no actual shortage of man power, but there definitely is a shortage of capable, trained, competent men and women who want to do a good job for the company and for the public.

"If we could install 25,000 telephones by eight o'clock in the morning, we would still be far behind in filling our requests for connections. Why, in one little suburban district alone we have orders for more than 21,000 telephones—and we have just begun the exchange building which will service these people when and if we get the facilities built."

"Humor," he repeated again. And the way he said it made me want to bow myself out.

BEFORE I left the telephone company, however, I went by the complaint desk and talked to one of the girls. She was an old "regular," having been with the company since before the war.

I explained my mission.

"That's not the right tack today," she responded. "The public is too overwrought for anything funny about the utility business, particularly the telephone business.

"But let me tell you that the public has not lost its patience. We have been amazed more than once at the tolerance, good will, and long-suffering of the public. There have been so many complaints about the service I couldn't begin to list them. But in the vast majority of the cases, the complainants have revealed an understanding of our problems.

"Businessmen, particularly, time and again have said, after making a complaint and hearing our explanation: 'I have the same kind of troubles here. I am sorry that I bothered you about the complaint.'

"The people understand that we have been through the most strained period in our modern national history—and I believe the public understands our problems.

"But none of our problems are funny, brother."

I WENT out smiling, but I don't know why.

After bolstering my morale with a cup of tea, I decided to go to the local transit company to dig up some humor. But before I caught the cab, I dug deep into my pocket for a clipping, which read:

"John J. Jones, 35, driver of a National Transit Bus, took the easy way

out last night—and left one hundred thirty-seven passengers in a lurch.

"Disgusted because passengers kept crowding onto the bus and would not let him close the door, Jones picked up his cash, threw the key of the bus on the floor, shoved his way through several bewildered passengers, and told one and all that he was quitting.

"The passengers began leaving the bus five minutes later.

"Interviewed at his home, Jones refused to comment, other than to say that he was 'fed up.'"

When I showed that clipping to the personnel director of a large transit company, he never cracked a smile.

"Yes, it's just one of a number of such incidents which have been reported," his eyes as sad as a lone cow who used to chew her cud in our barren cow lot in Alabama. "That fellow was a case for the psychiatrist, just like millions of us are on the border line these days. We need humor, but we need a lot more. We need to see some sense in our government; we need to see some real industrial production of consumer goods; we need to see the public treated with more respect than many of us felt able to give it during the hurried harried war years."

"LET'S put it this way," another transit company official told me. "During the war years, millions of Americans were deprived of the things they were used to having and deserved to have. For one reason or another, a lot of them sold their automobiles. Their radios went bad and they haven't bought a new set because they want the best that can be produced. Their wives need new electric or gas refrigerators and automatic washing machines.

"As long as the war was on, these millions of good Americans suffered in silence, realizing that most of the precious materials which normally went to make these things were being fed into the maw of Mars.

"Now, the European war has been over for more than nine months and the Japs have been defeated for more than six months. Yet, owing to strikes and unrealistic price policies of the government and many other factors, these millions of Americans have simply lost patience. They have never minded riding busses or streetcars to work five or six days a week as long as they could look forward to hearing the best radio programs that night; or going home to a wife who had not had to scrub the clothes with her own hands and naturally was tired and worn-out; or as long as they could look forward to a drive in the country in their own car on a Sunday.

"But, as the months since the war has ended have stretched out, these people have seen week after week pass without new hopes of getting the things for which they have waited so long.

❦

¶ "IN *foxholes, in LST's, in dark jungle fighting, the cocky, half-sardonic humor of America's fighting men became legendary. From camp newspapers, books written by servicemen, and on radio programs featuring soldiers and sailors came more wit than solemnity. They found laughter a weapon to help them through their darkest days.*"

Normally, if a bus were filled, they would not mind waiting five or ten minutes more. But now, their patience has snapped.

"The drivers, of course, many times have experienced the same disappointments with what is happening in the nation. They, too, have lost patience. As a result, there have been many such 'blow-ups' as this clipping describes. Nobody is to blame—yet, we are all to blame—when one of us slips over the border line these days.

"Certainly, it isn't funny—to the people who are left sitting on such a bus, to the company which has lost their good will, or to the driver, when he wakes up the next morning, comes to his senses, and realizes that he has thrown over what is normally a good job on impulse."

I FOUND that transit companies, too, are getting plenty of man power, but that it will be a long time before they have the kind of reliable, tolerant, dependable men throughout their organizations. They are going through what could be termed a "shaking down" period in which good men in every department are slowly but surely coming to the top.

They still have equipment shortages, are plagued with a high rate of employee turnover, and work constantly with the thought in mind that business is bound to fall off more (as it has to some extent) as manufacture of automobiles gets under way in earnest.

But there's no humor in city transit circles these days. The government's contradictory policies, the tendency of certain segments of the public to hold the abuses of some unions against management, the general idea of many employees that their job is "just a job," poses too many problems for management to allow much time for laughter.

The electric utility companies and the gas companies whose officers I contacted are not in the same kind of situation as the transit companies and the telephone companies, but it's difficult to dig up much humor around *any* kind of public utility these days.

AND, no matter where you go, you can't find any tendency on the part of utility management to want to laugh at complaints from the public, no matter how ridiculous.

"We can't afford to lose one friend among the public—and we wouldn't want to even if we had one to spare," a man in the complaint department in a gas company told me. "Everybody who gets a gas bill thinks it's too high, no matter how well versed he may be in economics.

"Our rates have actually been lowered during the war period. This means that, except for other public utilities, we are the only business in the whole city that has not had one price increase of one kind or another. Yet, we know that the very regularity of our bills, going as they do, into virtually every home year in and year out, creates a natural opposition to us on the part of many members of the public.

"People, including me, and you, and our richest men, just naturally don't like to get bills. They know that they must pay for all the gas they use, just as they must pay for groceries, but they change grocers, or buy only part of their groceries from one particular store. But they have to get all their gas from us—and that's another thing that irritates a lot of folks. Even though we

Shortages in Time of Peace

"Not for always can there be shortages of the things we need in peace—not in a nation that outproduced friend and foe alike. Not for always can there be increases in juvenile delinquency and a further breakdown in minds and morals—not in a nation which boasts the greatest number of churches of any nation in the world and has the most educational facilities ever known in any nation."

give the best service possible, they resent the fact that they can't shop around for service from another similar company.

"All in all, we have a hard time finding anything funny about life. About one-third of the people, particularly the thoughtless fringe, always is willing to vote to have the city, state, or national government, take us over and operate us like the post office. They don't realize that the post office is shot through with inefficiency, and that if we operated this company like the post office is operated, we long since would have lost the good will we have built up so carefully through the years.

"It's a grim business . . . "

He talked so much like a captain briefing the members of his plane crew for a bombing mission I looked around the room involuntarily to see the reaction of the aviators. Then I realized that the war was over. No one was going to have to attack the enemy at dawn, or watch out for Japanese snipers.

But the more I thought of the reactions I had received from public utilities executives and employees alike, the more I thought of the similitude between their condition today and the forces faced by men about to go into battle. Instead of fighting with weapons for what they know is best for their companies and their country, these men are waging a grim war of wits with inertia, prejudice, governmental stupidity, and a whole number of factors over which they have no control whatsoever.

I couldn't blame them for being grim in the face of their obvious and hidden problems.

Yet, I couldn't help but remember that in the darkest hours of the late war, American soldiers proved that they had not lost their native sense of humor. In foxholes, in LST's,

in dark jungle fighting, the cocky, half-sardonic humor of America's fighting men became legendary. From camp newspapers, books written by servicemen, and on radio programs featuring soldiers and sailors came more wit than solemnity. They found laughter a weapon to help them through their darkest days.

AND I couldn't help but wonder if Americans today — consumers, labor, management, farmers, all of us —couldn't use our last ounce of tolerance and good humor for *a little longer.*

Not for always can there be shortages of the things we need in peace—not in a nation that outproduced friend and foe alike. Not for always can there be increases in juvenile delinquency and a further breakdown in minds and morals — not in a nation which boasts the greatest number of churches of any nation in the world and has the most educational facilities ever known in any nation. Not for always must there be misunderstandings, labor conflicts, stupid group activity—not in a land in which more people have access to more newspapers and magazines and books and moving pictures than the people of any other nation.

There'll be laughter yet—again—in the public utility business. Just as soon as some of the public futilities are solved.

When that time comes, I'll write the article we talked about. There must be some life left in an industry as big as that of the public utilities.

Trade Control and Monopoly

"DICTATED *economies tend to insulate themselves from the rest of the world and to rely upon government cartels and monopolies. This creates an international restriction on competition which endangers peace because then governments themselves become great trading bodies, and the exchange of goods and services among nations is controlled, not by competition, but by military power. Cartels are contrary to the principles of free enterprise. International trade and domestic trade are not two things and cannot be isolated in compartments one from the other.*"

—EXCERPT *from resolutions committee report, National Association of Manufacturers.*

The Significance of Public Ownership of Utilities

PART II

So long as electric power is in the hands of an individual, says the author, the actions of that individual are controlled by regulation; but when the state is the owner, the offended citizen can appeal only to the bureau which oppresses him. Insidious spread of collectivism.

BY J. A. WHITLOW

THE courts have made many distinctions between those acts of government in which the government was acting in a *governmental capacity* as distinguished from its acting in a *business capacity*. Government has certain historical and undisputed functions when it acts for protection or regulation. In administering to the general welfare, the government, at times, must own and operate certain property. It has a vast public domain and only government could possibly allocate this land to individual owners and only government can adequately provide for wide conservation of natural resources. Only government could build such a system of highways as we now have and regulate the use thereof. Navigation and flood control are natural developments promoting the general welfare and for which only government is capable of providing on a comprehensive scale. One of the justices of the U.S. Supreme Court has described these activities as "uniquely capable of being operated only by a state," as compared with "business of a type in which private enterprise is ordinarily engaged." This would seem to define very clearly the proper functions of government, even as to the ownership and management of property, and separates those cases in which such government ownership and operation is a true function of government

from those cases in which "business ordinarily engages." This is capable of interpretation by the ordinary citizen. In a decision holding Cleveland's municipal transit system taxable, the Ohio Supreme Court stated:

> There can be little doubt that the transportation of property from place to place by means of a transit system consisting of street railways or bus lines is in no sense a governmental function and where a municipality owns or operates such a system for the convenience of the public, it is engaged in a private competitive business for profit, and while such property is publicly owned, it is not used exclusively for a public purpose.

Asserting it was common knowledge that the city had already paid off almost half the revenue bonds in its three years of operation of the utility, the court said:

> We think that is cogent evidence that the city has entered the field of private competitive business for profit.

In so far as this highest authority is concerned, its decisions seem to be consistent with the above principle, in cases where the right of the government to tax certain state activities has been disputed. For instance, in a recent case, the Supreme Court upheld the right of the Federal government to tax the revenue derived from the sale of bottled mineral water from Saratoga Springs, which business was being conducted by the state of New York. This decision was based on preceding cases where the court had upheld the right of the Federal government to tax a state retail liquor business and also state railway operations.

ONE writer, in trying to determine where the state should leave off and private enterprise begin, finds the determining point in the use of "coercion." Whenever a citizen must be physically restrained from some act, or should be coerced into performing some act, only the government has the right to restrain physically or coerce the citizen. Those acts which are ordinarily brought about by the investment of private capital or, referring to the learned justice, are businesses of a "type in which private enterprise is ordinarily engaged," are the functions of free enterprise, and state participation in such enterprise falls in with the principles of the Socialists and can be determined as socialistic with a capital "S," because such state enterprise interferes with or displaces private enterprise. This is also at the expense of private enterprise because state capitalism is only possible with capital wrung from the capitalistic system.

In the erection of dams for navigation or flood control, it is often possible and some times economical to superimpose power dams upon the flood-control dam. The production of electricity is one of the businesses in which private enterprise is ordinarily engaged. However, the projects may be large or the cost so great that private enterprise cannot undertake the building of the dam for power under these particular conditions. If the project is otherwise justified, the undertaking by the government is, of course, socialistic but it does not conform to the socialism of our Socialists because it is not aimed at depriving private industry of any of its rights. If the project produces cheaper power at this dam than the neighboring private utilities could, government participation cannot be criticized, and only the government could coerce the money for this project. However, when the government bureau goes further, distributing this

government power in competition with taxpaying industry, it thereby enters into destructive competition, for coercion is not required for the transmission and distribution of this energy under public regulation.

THE same principle applies in the case of municipal ownership. When Edison demonstrated that it was possible to generate electricity at one central point and distribute it commercially to people who could not afford to generate it for themselves, he originated an idea which took the country by storm. Every city and town wanted and was determined to have this great convenience at the earliest possible time. The undertaking was new and not well understood and many times was conducted at a loss. The equipment used and plants built in one year might become obsolete the next year.

Under such conditions, capital is always timid and private capital was not forthcoming for establishing electric service in every community as quickly as desired. Many towns therefore voted bonds and built a municipal plant and system. This simple socialistic enterprise was again not the socialism of Norman Thomas or the communism of Earl Browder. It was not aimed at the destruction of any private enterprise, but furnished a service where the money could only be obtained by the government, that is, it was coerced from the taxpayers.

THIS writer recalls a town that in 1920 had a population of about 3,500 and still did not have electric service. Private capital had not seen fit to supply electric service in that place. That town was undoubtedly within its rights in furnishing its citizens with this service and such act was not socialism. Today, however, the mayor of that town seems to possess an enormous grudge against electric utility companies. He goes from town to town where municipal ownership campaigns are in progress and often where they are not, trying to persuade the citizens to discredit a company which has been furnishing a service of high quality at reasonable rates under state regulations. Such an act is definitely an attack on free enterprise and whether he acknowledges it or not, that mayor is in bed with Norman Thomas and Earl Browder. He is lending his influence toward the gradual socialization of all industry conforming exactly to the Socialists' line.

When a state engages in business which ordinarily is the function of free enterprise, it is running counter to both the principles of good government and good business. Government must be responsive to the people and, therefore, is subject to quick changes. That is the way it should be. On the other

¶ *"WHEN Edison demonstrated that it was possible to generate electricity at one central point and distribute it commercially to people who could not afford to generate it for themselves, he originated an idea which took the country by storm. Every city and town wanted and was determined to have this great convenience at the earliest possible time."*

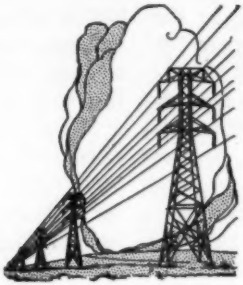
hand, business requires permanency of management and usually government operation contributes nothing to the progress of the industry because the motivating influence of private ownership is absent. In his fifth annual report, the rural credit department commissioner of South Dakota, in referring to the failure of the state's venture, said: " . . . it offers the most convincing proof that the state's business is to govern and that it should restrict its activities to that and that only."

Government Ownership Gradually Destroys Free Economy

IN the beginning, we said that some people who express profound belief in free enterprise are favorable toward government operation of electric utilities. Some will even go far enough to say they recognize that this is part of the Socialist program but say they believe the move towards socialization will stop with taking over utilities. On the other hand, those who fear this encroaching control are confident that the move toward socialization of industry will proceed and they have a great store of historical evidence to prove their point. There was recently published a list of about thirty industries in which TVA, for instance, is engaging. Professor Burnham calls attention to those who believe that this intrusion of the government does not "abridge the basic rights of property." Then he states these, "Direct economic incursions of the government do, precisely, abridge and even eliminate those rights" and are, therefore "intolerable." He says such a belief "disappears as soon as we turn from the frequent immediate effects to the full historical implications of the process."

Professor Burnham further states that "Government ownership and control" in the opinion of the Leninists, *"in the long run, if not at once, is anti-capitalistic in its historical effect. . . . When the government takes over either in full ownership, or in some degree of control, some section of the economy, by that very fact, that section of the economy is removed entirely or partially."* He compares the situation to that of two persons playing poker, one of whom has a large stack of chips. By the law of chance, each player should win half the time, but if in addition to his winnings, one player has a sleight-of-hand method of taking chips from the other player's stack, then that other player will not have a fifty-fifty break and will go broke even though he started with a big stack.

HUMAN nature will show up under most any condition. The little bureaucrat wants to be a big bureaucrat. A big bureaucrat wants more power. When one industry is destroyed, the Socialists are very proficient at inventing what one writer calls "new ideologies" to handle the masses. New and nimble arguments are forthcoming to lead the public on. It was Mr. Roosevelt who said, "We have built up new instruments of public power which in other hands would provide shackles for the liberty of the people," and Carl Thompson, the erstwhile contender for the office of President on the Socialist ticket, once said "successful public ownership for power production means an adequate control of transportation and of industrial sources dependent upon electrical power for their successful operation." In other words, he recognizes that control of electric power



Regulation of Electric Power

"So long as electric power is in the hands of an individual, the actions of that individual are controlled through regulation. A citizen who is aggrieved has the state's regulatory body, or the courts, to which he can appeal for redress of grievances. When . . . the state controls this power, regulation passes out the window. The only person to whom the offended citizen can appeal is to the bureau which has oppressed him and that part of his rights as a citizen has been surrendered forever."

gives the government control of those industries dependent upon electric power.

So long as electric power is in the hands of an individual, the actions of that individual are controlled through regulation. A citizen who is aggrieved has the state's regulatory body, or the courts, to which he can appeal for redress of grievances. When, however, the state controls this power, regulation passes out the window. The only person to whom the offended citizen can appeal is to the bureau which has oppressed him and that part of his rights as a citizen has been surrendered forever.

GREAT effort is made on the part of the power bureaucrats to convince the people that other "social benefits" result from this government use of power. Usually that merely means shifting from one government agency that must work through coöperation with the public to an agency that has the power to compel that coöperation. No new service is, or has been, instituted whatever. Government capitalism in that case is using private capital to replace private capital, or free private enterprise. In his book, *TVA—Democracy on the March,* the chairman of the TVA board takes many pages to describe and applaud these "social" benefits which is in accordance with Professor Burnham's statement that "new ideologies" are invented to persuade the masses. When one section of the economy had been taken

over, that section disappears in the whole economy of private enterprise. Encroaching socialism works as inexorably as any of the other laws of nature, and liberty disappears. We are fond of saying that our free enterprise gives us a higher standard of living than socialism and this is based on experience, but there is another experience that is often overlooked. There have been many ventures in socialism, but because they are contrary to human nature, they have all failed and disappeared except where they have been maintained by force. Force gravitates into the hands of the strong, and after the capitalists have been "eliminated or rendered impotent and negligible, the masses will then be curbed, partly by armed supression and partly by new ideologies."

Professor Harold Laski, who steered the Labor government of Britain into socialism, says there is no compromise between individualism and the socialized state. These opinions of experts conform to experience and should be sufficient to convince our public power editors and others that encroaching socialism through government power is the nose under the tent. Once accomplished, its travel forward is inevitable.

What Is Profit?

WE have observed that the Socialists are quite frank in stating that their objective is to destroy the profit system, and when other arguments are wanting, the promoters of government projects propound the idea that, under their plan, electric power will be furnished to the people at cost and not with a "few reaping a profit."

To begin with, those who engage in this business are not a few. Besides the thousands of stockholders—one company alone has over 40,000 stockholders—there are the people who have money invested in various related industries and businesses. It has been repeatedly pointed out that every person who has a life insurance policy is really an investor in public utilities because it is by investment in the securities of these companies that the life insurance companies earn a great deal of the money with which they pay the policyholders or build up the equity for endowments and annuities. Those who believe in the elimination of the profit system certainly do not believe in the American way because it is founded on the profit system. There is also a great misunderstanding in reference to the profits. The profits of a regulated utility consist simply of a fair rate of interest on the investment. Most companies are fortunate today if they realize an over-all return of 5 to 6 per cent on the investment. The company that has been doing that well has been able to refinance on the basis of approximately 2¾ to 2⅞ per cent bonds and 4 to 4¼ per cent preferred stock. On the loans which government makes to agencies, it charges from one to 4 per cent, so the difference in profit between private companies and the government bureau are not large. In fact, after the security holder has paid the various taxes on what he receives, there is very little difference. There is no profit to the company above this "fair rate of return."

LIKEWISE overemphasis is made on the effect of reducing rates through public ownership for the reason that the cost of electricity is such

a small percentage of the outlay of the individual. Take household electricity, for instance. In 1937 the Division of Social Research, WPA, estimated that household electricity was 1.5 per cent of household expenses. In 1941, the National Resources Planning Board estimated this at 1.8 per cent. The July, 1943, *Monthly Labor Review* (U.S. Bureau of Census), estimated 1.3 per cent, and in 1937 the National Industrial Conference Board estimated 1.1 per cent for household electricity, but 2.4 per cent for tobacco. This organization also found that more money was spent for electrical appliances for using electricity than was spent for the electric service itself.

The above has reference to household electricity. In so far as electric power for industry is concerned, in the 1937 Census of Manufactures by the U.S. Bureau of Census, they estimated that the cost of electric power averaged only .82 per cent of the cost of manufacturing. In other words, an article that costs $100 to manufacture could be sold 82 cents cheaper if the electric power were free.

To one who is acquainted with this condition, it is strange that the power bureaucrats have been able to make such an impression in people's minds by talking about the results of cheap power. Sometimes this power is cheap, as in TVA, because it has obtained free money from the government and it is practically tax free. In some other cases, really cheap hydro power has been developed, but these cases can be matched by equally cheap hydro power developed by private industry whose records equal or exceed that of the government power. There seems to be a sort of hero worship toward mighty dams which thrill people and cause them to inadvertently overlook the implications involved in this system of socializing our nation.

Strangely enough the socialist minded seem to think that if private capitalism is abolished, then the costs of capital are eliminated. But money is required just the same and the only effect is to shift those costs from the users of the service to the general taxpayer.

The Approach Is Insidious

THIS system of encroaching control works so insidiously that Mr. Average Citizen does not realize what is coming. Hermann Rauschnig in his book, *The Voice of Destruction,* quotes Adolph Hitler as saying, "It gives us national Socialists a special secret pleasure to see how the people about us are unaware of what is really happening to them." Mr. Raushenbush, whom we have already quoted, says, "One good man with his eyes, ears, and wits about him inside the department . . . can do

¶ MANY *people listen to the arguments of the Socialists and think "that seems to be a good thing. Maybe we'd better adopt it in our system." Thus they are inveigled into setting some section of free enterprise over into the government's functions, and by so doing are gradually signing away their liberties.*

more to perfect the technique of control of industry than a hundred men outside," and perhaps the reader will be interested in knowing that for several years Mr. Raushenbush has held an office in the Department of Interior as head of the research section of the power division.

The *Voice O'Labor* (United Mine Workers Journal) says in an editorial:

> The people of the United States who sanction government-owned business in our country, are setting the stage for a socialized government to take over the land.
>
> Once socialism is established, the farmer, with his private ownership of land, is the most vulnerable to attack, for he raises the crops without which life cannot exist.

In a case involving the Santee-Cooper Authority before the supreme court of South Carolina, the attorney for the authority stated that we could now reveal the government's real purpose in developing hydro projects and that purpose as, "everybody understood and now knows," was to "socialize, so to speak, the business of producing and distributing electric energy through public grants and public ownership."

SENATOR Glen H. Taylor of Idaho, in a speech supporting the authority idea, admitted "I will admit that these projects are socialistic. There is no use beating around the bush about it."

The encroaching control of socialism has in all cases been advanced through the argument that it is bringing benefits to the people. Mr. Clayton Rand, in his syndicated column, in speaking of communism said:

> It will soak down from the top. If totalitarianism ever destroys democracy here, it will be no beer garden putsch, or march on Rome, but an insidious and relentless regimentation of free enterprise.

Industrial News Review (Portland, Oregon), in its issue of February, 1941, says:

> No aggressor nation ever planned more carefully to subjugate a people than the power socialization group in this nation is planning to subjugate a heretofore free private enterprise, now operating under state and Federal regulation. *If the electric industry can be socialized in this manner, don't be credulous enough to believe that the movement will stop there—it will be rapidly extended to other industry and business.*

Many people listen to the arguments of the Socialists and think "that seems to be a good thing. Maybe we'd better adopt it in our system." Thus they are inveigled into setting some section of free enterprise over into the government's functions, and by so doing are gradually signing away their liberties. If the whole picture were presented at one time, they would shrink in fear, for they are dedicating their posterity to economic slavery. They do not recognize the end results of encroaching control. In this connection, we are reminded of the words of Alexander Pope:

> Vice is a monster of so frightful mien
> As to be hated needs but to be seen;
> Yet seen so oft, familiar with her face,
> We first endure, then pity, then embrace.

Payment in Advance Unwelcome

SOME folks in Austin, Texas, have unusual ways of paying their water and electricity bills, thinks E. D. Wiginton, office manager of the municipal department. One man sent the city a check for $200 with instructions to "let me know when it's all used up."

Office manager Wiginton doesn't like the idea, however, because it "messes up our bookkeeping system."

Government Utility Happenings

No Immediate Grants Seen for Rivers, Flood Control

SIGNING bills to authorize nearly $2,000,000,000 of flood-control and rivers and harbors projects late last month, President Truman declared that actual construction on a majority of these works probably would be deferred for several years. The two measures contained no funds for the projects which they authorized, and the President announced that he would not seek appropriations for any of them in the near future.

"I do not intend to request funds for any of these projects during the current fiscal year," he said.

One of the bills authorized flood-control projects which would cost an estimated total of $952,000,000 to complete. The other approved rivers and harbors improvements costing an estimated $945,000,000.

"I do not intend to approve any requests for appropriations or allocations of funds for the construction of any of these projects until all the important questions concerning them have been satisfactorily resolved, and until all of the Federal agencies directly concerned are substantially agreed upon the technical features involved," the President said.

HE further stated his intention to review these and other Federal works programs "with a view to saving strategic materials and to diminishing inflationary pressures."

The President declared that the two new authorization bills brought the backlog of authorized river projects under War Department jurisdiction to a total of nearly $5,000,000,000. At the present rate of congressional appropriations for such work, it would take thirty-five years to complete the rivers and harbors projects and twenty years to finish the flood-control works now authorized, he estimated. Future financing of such projects, he added, "must be based on budgetary requirements" for the period in which the funds are to be advanced.

The Chief Executive's statement, though somewhat unusual in that it demanded the delay of the projects involved in the measures he was signing, had not been unexpected. Shortly after the bills had been cleared by the Congress, officials of the Bureau of the Budget urged the President to veto them as "inflationary" at this time.

In other recent statements and messages to Congress, President Truman has urged the reduction of unessential Federal expenditures and the maintenance of present tax levels until the national budget can be balanced. As yet, however, he has vetoed no major appropriation or authorization bill on these grounds.

REA Again Rebuffs Industry Bid for Coöperation

ANOTHER invitation from the private electric utilities and other groups for participation in planning a farm electrification program has been rejected by the Rural Electrification Administration. This latest proposal took the form of a bid to REA to become a cosponsor of a national farm electrification conference to be held in Chicago on November 7th and 8th.

The conference is being sponsored by

a number of organizations, including the American Society of Agricultural Engineers, Agricultural Editors Association, National Grange, National Electrical Manufacturers Association, Edison Electric Institute, National Association of Domestic and Farm Pumping Equipment and Allied Manufacturers, and the National Retail Farm Equipment Association. Representatives of the Department of Agriculture's Research Administration and the United States Office of Education are expected to participate.

Invitations to take part as cosponsors were extended to the American Farm Bureau Federation, the Agricultural Extension Service, and REA. At the time the conference was announced, REA officials declared that the agency had not yet received a formal invitation for REA to participate as a cosponsor. However, they said REA would refuse such invitation when and if it was tendered.

These sources implied that the refusal probably would be based upon objections to previous invitations of a similar nature. In a recent speech at Austin, Texas, and in a letter to landgrant colleges, REA Administrator Wickard explained his rejection of a proposal made last spring that REA join with private electric companies and the American Farm Bureau Federation in planning a farm electrification program. He rejected that suggestion, he said, because "I do not believe it advisable for REA to participate in the programs proposed by the private utilities, which have in the past opposed and which today continue to oppose the REA program."

ARRANGEMENTS for the Chicago conference were completed at a meeting of the sponsors in New York on July 18th. It was announced that the topics to be discussed will include the raising of farm living standards and the reduction of farm production costs through increased uses of electricity. Research into new power uses, coöperative activities designed to improve farm applications of electric service, and educational programs to teach farmers the advantages of newly developed methods will be considered, it has been reported.

George Kable of New York, editor of an agricultural publication, was named chairman of the conference. Truman Hienton of the Agricultural Research Administration, Washington, D. C., was selected as vice chairman. Sponsors of the meeting released the following:

> The conference, it is hoped will help to coördinate the thinking of every organization and individual interested in farm electrification, so that farm organizations, agricultural colleges, the Department of Agriculture, manufacturers, power suppliers, and others can jointly work toward the objectives of helping farmers to solve many of their chores and household problems electrically.
>
> The farm electrification movement, which began in 1897, has grown rapidly in recent years, with power lines at present serving more than 3,000,000 of the nation's 5,950,000 farms. Hundreds of millions of dollars will be spent by power suppliers to bring electric service to the remaining nonelectrified farms within the next few years.
>
> Agricultural engineers feel that the job of farm electrification will not end when the nation's farms are connected to power lines. They view it as a continuing process, stretching over many years, as concerted efforts are intensified to produce new electrically operated farm production equipment, and to disseminate all possible information concerning the practical use of such devices on the farm.
>
> With these thoughts in the minds of the sponsors, the conference will draw representatives from all branches of industry interested in the farm market, agricultural leaders, colleges of agriculture, power suppliers, and electrical dealers to meetings at which authoritative information on the utilization of electrical production equipment and the need for further research in farm electrification will be presented.
>
> Rural electrification programs of both REA and the private utilities have been delayed by shortages of construction materials, especially poles, conductor, and distribution line accessories. It is expected that data on the output of such materials also will be presented at the Chicago meeting.

Utility District Bond Sale Stirs Financial Groups

INVESTMENT banking circles are evincing considerable interest in recent financing activities of the Sacramento (California) Municipal Utility District. The utility district, which will take over

distribution facilities of the Pacific Gas and Electric Company in Sacramento on January 1, 1947, has sold a $10,500,000 bond issue and realized a $5,225,627 premium thereon.

This arrangement was the result of the district's prolonged efforts to obtain the city's electric system, which was terminated only a few weeks ago. In 1934 the voters of the area approved a $12,000,000 bond issue to finance the district's acquisition of the property from Pacific Gas and Electric. However, extended litigation over the purchase, which was contested by the company, continued through the succeeding years.

Meanwhile, directors of the district sold bonds for $900,000 and decided to retain another $600,000 of the amount authorized by the voters as a reserve for emergency use. This left $10,500,000 for which they might issue bonds without seeking additional authorization by referendum vote. This proved insufficient to carry out the final agreement for the acquisition, which called for the district to pay the company $11,632,000 for the city system plus $1,500,000 to $1,700,000 for system improvements and additions made since 1938. Further, the district needed funds for operating expenses until it began collecting revenues of the system after taking over the property.

In all, the district directors decided that they needed $5,100,000 over and above the $10,500,000 for which they were authorized to issue bonds. Faced with the necessity of taking over the system by January 1st, they hesitated to risk the loss of time and other uncertainties of seeking authorization for additional bonds through another referendum vote. Their solution—offering for sale the $10,500,000 issue with a demand for a premium of at least $5,100,000 from the purchaser—was unique in the annals of municipal utility financing.

THE single bidder for the bonds was a syndicate headed by the Bank of America (California). The district accepted this group's offer, the terms of which provided a premium of $5,225,627 and an interest rate of 5 per cent, the maximum rate the bonds were allowed to bear, on the $10,500,000 issue. Since the premium is not repayable and bears no interest, the transaction actually gave the district a total of $15,725,627 at a net interest cost of 2.72 per cent over a period of thirty years.

While the premium received by the district was $125,627 in excess of the amount it sought, the method of financing cost the district a higher over-all interest rate than would have been the case had it not demanded a premium. A representative of the Bank of America told the directors that they probably could have saved one-half of one per cent in interest charges if they had been able to sell $15,600,000 worth of bonds at par without a premium. Total interest cost to the district over the 30-year period of the $10,500,000 bonds, between 1950 and 1979 inclusive, was estimated at $6,253,724.

Public Body Ordered to Pay Federal License Fees

PUBLIC power agencies are not exempted from payment of annual charges for Federal hydroelectric licenses merely because they sell power on a nonprofit basis, according to a recent decision by the Federal Power Commission.

The case involved an application by the Central Nebraska Public Power and Irrigation District for exemption from payments for the calendar years 1942 and 1943, which were due under its license for a hydro project on the Platte and North Platte rivers, Nebraska. The commission's denial of this application reaffirmed two previous orders issued by FPC during 1944. Commissioners Smith, Draper, and Wimberly filed the majority opinion, from which Chairman Olds and Commissioner Sachse dissented.

Central Nebraska District based its application for exemption on the grounds that all of the power from its hydro plant was sold to the public without profit, declaring that a portion of its out-

put was used for state and municipal purposes. The agency contended that, as a municipality and public agency of the state of Nebraska, it could not, under state law nor within the meaning of the annual charge exemption provision of the Federal Power Act, sell power at a profit.

The commission's opinion cited evidence indicating that the Nebraska agency earned net incomes of $106,320 in 1942 and $263,906 in 1943 by sales of power to other parties for resale. The majority of the commission held that the agency had not satisfactorily shown that such resales were to the public without profit. These sales were made by the district to state agencies and municipalities, it had been contended.

THE majority opinion clarified previous FPC policy in denying exemptions where profits had been reported by a municipality, declaring that a municipality can conduct its power operations with profit. The opinion said:

> When a power plant is constructed and operated by a public agency, we assume that there will be a public benefit. The question which we must consider, however, is whether from its power operations there is "profit" within a statutory exemption clause.

Under the Nebraska law, the opinion continued, the Central Nebraska District —and other agencies operating federally licensed hydro plants—is required to be operated as a profit-making government enterprise. It was noted that the district was limited in the use of its power revenues to the payment of operating expenses, retirement of indebtedness, and construction of extensions of facilities. The majority contended that such repayment of capital investment "can only be made from profit." The opinion added:

> Having permitted this public agency to deduct a depreciation charge as an expense, there is no reason why we should also allow it to treat the repayment of its capital investment as a further and duplicate expense.

It was further contended that the Federal Power Act, though it provided preferential treatment for state and municipal power projects, did not express the intention of Congress to exempt all such licensees from payment of annual charges. If there is to be any change in this statute, it remains for Congress to make the revision, the majority concluded.

Rate Reduction Sought

POWER rates for suburban consumers now supplied by the Olive Hill (Kentucky) municipal distributing system may be reduced as a result of a hearing to be conducted by the Kentucky Public Service Commission on August 22nd.

Although the commission has no regulatory jurisdiction over the rates a municipal plant charges its own residents, it has ordered Olive Hill to show cause why it sells power outside its city boundary. It has also ordered the Kentucky & West Virginia Power Company and the Mason-Fleming Rural Electric Coöperative to show cause why one of them should not serve the 150 suburban consumers involved. Rates of both the company and the coöperative are lower than those charged by the municipal plant, the commission contended.

New Power Line for SWPA

NEW construction to be undertaken by the Southwestern Power Administration under its recent congressional appropriation of $7,500,000 has been announced by SWPA Administrator Douglas Wright.

The agency's present plans, he said, call for construction of a 154-kilovolt transmission line from Norfork to Nimrod, Arkansas, where it will connect with the Ark-La transmission line (which is to be purchased with a part of the funds). A similar line will be built from Markham's Ferry to Tulsa, Oklahoma. A 132-kilovolt line will be built to Denison dam, via Okmulgee, Weleetka, and Ada, Oklahoma. A 66-kilovolt line will run from Norfork to West Plains and Willow Springs, Missouri, and other 66-kilovolt lines from Denison to Wilson, Comanche, and Walters, Oklahoma, and several northern Texas communities.

Wire and Wireless Communication

BELL system people everywhere have made great progress in meeting the enormous demand for service. But the challenge grows every day, and lack of enough basic raw materials—metals, plastics, textiles, and paper—makes the job tougher. There follows a high-spot summary of progress and problems, with special emphasis on the shortage of materials and efforts being made to achieve the highest possible production of telephone equipment.

Since VJ-Day all but about a quarter of the more than 2,000,000 people then waiting for service have been cared for.

About 1,700,000 telephones were added by the system in the first half of 1946 alone. Expenditures for new construction in the same period exceeded $250,000,000. Nearly 550,000 Bell system men and women—100,000 more than at the end of the war—are working to handle the greatest volume of calls in history, to catch up on held orders, and to restore and improve upon the quality of service provided before the war.

So great is the new demand for service, however, that on July 1st more than 1,800,000 people were still waiting for telephones. The majority of these applications have been received since the beginning of the year. And each month the volume of calls goes up—up—up. Local calls have increased more in the last year than in the previous five years put together, and toll messages, including long distance, are far above the level of a year ago.

So much for demand. Now what about supply?

WESTERN ELECTRIC, the system's supply unit, with the help of its own suppliers and subcontractors, has currently been smashing production records on telephones and central office equipment, and hopes to pulverize them further. In June, combined telephones were being shipped at the rate of more than 15,000 a day (which was 50 per cent more than in January and 60 per cent more than in the peak month of 1941), and the company shipped 110,000 lines of dial equipment, or 25 per cent more than the peak monthly production in 1941.

On the other hand, Western's ability to make and deliver the goods the telephone companies need is considerably ahead of the supply of raw materials needed to make them. For example, Western turned out more than 600,000 conductor miles of exchange cable in June, but it wasn't nearly enough, nor is it anything like the amount the company *could* produce if only more lead were available.

But there isn't enough lead. There isn't enough steel. There isn't enough cotton to insulate the conductor metals. There are critical shortages in the supply of copper and of the basic materials for making plastics. There aren't enough poles to meet our immediate needs, or

enough barrels of creosote to keep the poles from rotting.

So what are Western Electric and Bell Telephone Laboratories people doing about it? Everything that imagination can suggest and ingenuity devise. Western has scoured the markets of this and other countries for raw materials and finished goods. It has enlisted the help of other manufacturers in making tools, parts, and apparatus.

It has provided engineering help and even machinery to other suppliers, bought all usable government surplus communication equipment it could find (about $7,000,000 worth so far), visited the cotton mills and lumber yards and the importers of foreign goods, picked up small lots of lumber and steel at warehouses and at retail yards, in addition to purchasing everything that can be purchased at saw mill and steel mill. It has worked from day to day and from hour to hour with Bell Laboratories' engineers in introducing substitute materials where others could not be found. It has searched out and bought everything that looked even remotely usable—sometimes when the article was less desirable than that ordinarily required, sometimes when it was of a higher and more costly quality than needed.

Western Electric has done all these and many other things to deliver the maximum possible quantity of equipment and supplies. It is still doing them and will keep at it just as long as necessary. And at no time have inadequate ceiling prices on Western Electric products sold to the telephone companies delayed delivery of equipment the Bell system needs. To give *service,* Western has not hesitated to take losses.

Bell Laboratories' work before and during the war to find ways for substituting one material for another has proved invaluable in the postwar period. The problem in a nutshell is, "How can we use whatever we can get?" Sometimes the job is to find a substitute for a substitute for a substitute. In other instances, depending on the supply situation, they go from one material to another and then back to the first one again.

Because there are just not enough poles to meet demand, Bell is using and encouraging production of a great variety of timber. Each requires adjustment of treating plant methods, for various timbers receive treatment differently.

So-called "low residue" creosote (a coal by-product) has been used for many years to treat poles. It is as hard to get such creosote today as it is to walk into a store and come out with all the nylon stockings you want. But Bell Laboratories for years had been investigating practicable substitutes. Mixtures of creosote and petroleum are now used, to which have been added, first (get ready for some big words!) pentachlorphenol; then, when that got scarce, tetrachlorphenol; and now, as *that* is becoming scarce, copper nephthenate. Substitute for substitute for substitute, see?

More than 5,000 material and design substitutions have been authorized on hardware and tool items used in outside plant construction and maintenance. As many as 20 different substitutions have been authorized on a single tool. While some of these can be made without much trouble, others take a lot of engineering effort.

Telephone central office equipment requires a great quantity of structural steel shapes. *Rolled* steel shapes are in many cases being replaced by *formed* thin sheet steel channels and angles. Where feasible, aluminum is being used in place of sheet steel for mounting plates.

Every telephone has an induction coil the framework of which used to be brass. During the war it was steel. Now we are back to brass when we can get it—the brass situation changes almost daily—or a high-strength aluminum alloy.

Every telephone dial has a main bearing which always used to be of bronze, which contains considerable tin. Now, because of the tin shortage, brass is employed, except in the dials used by telephone operators.

These are only a few examples of the almost endless cycle of substitutions which have been devised. It is only by a long and constantly changing series of them that Western Electric has been able to turn out the huge quantities of equipment that it has delivered to the telephone companies since VJ-Day. But substitutes can never be the whole answer to utmost sustained production. To achieve that, the over-all flow of raw materials must increase.

Lead is scarce throughout the world and the government has sharply restricted its use. The result is that output of telephone cable is substantially below Western's capacity. Already the Bell system has had to reduce its 1946 toll cable construction program.

Copper is in short supply as a result of recent strikes in the copper industry. Continued increase in production by Western will require more copper than is now available. The demand for magnet wire, used in coils, relays, and similar equipment, is far in excess of the mills' capacity.

Western is increasing its own facilities for making this wire, but it must purchase millions of pounds in addition and it is doubtful whether full requirements for 1946 can be covered. Brass mill products, used in central office switches and other telephone apparatus, are also scarce.

STEEL production schedules have been set back by the steel and coal strikes and steel alloys important in electrical manufacture are critically scarce. It is uncertain whether the Bell system's needs during 1946 can be met fully.

Cotton yarns are needed by Western Electric in huge quantity for insulating wire and switchboard cable. Shortage of labor, absenteeism, low price ceilings, the shifting of production to synthetic fibres, worn-out textile machinery, and other factors have all contributed to reduced output of the types of yarn we need. Supplies are not yet in sight to enable Western to meet its 1946 objectives.

Plastics, lumber, wood pulp, and paper, all vital to Bell system operations, are not yet in sight in sufficient quantity to meet ever-increasing needs.

Many of the material shortages are expected to continue for some months and may result in curtailment of certain Western Electric manufacturing operations. While Bell system demands for equipment continue to move upward, supply conditions may grow worse, rather than better, before the system is over the hump.

To sum up:

1. Demand for service has been so great that our production program has been several times increased.

2. This program now calls for more than 4,000,000 telephone sets in 1946, enough central-office equipment to be installed during the year to serve more than 2,000,000 additional main telephones, 30,000,000,000 conductor feet of exchange cable, and 360 broadband carrier systems which make possible the transmission of several conversations at the same time over a single pair of wires. The figures cover not only Western Electric production but all that can be obtained from other manufacturers and from surplus war materials.

3. Even this program will fall short of actual 1946 needs—and to achieve it, production must increase still further in the second half of the year.

4. Such further increase can be accomplished only if more raw materials become available.

WESTERN ELECTRIC people are not willing to admit that the goal is beyond reach. They are determined to use every possible means of reaching it. Telephone people should know that on the supply front as well as on the construction, installation, and operating fronts, everything that can be done is being done. The remarkable results already achieved by all forces are the best possible evidence of this. It is important, however, that the system understand, and help the public to understand, the nature and extent of the problem of obtaining raw materials, and its possible effect on its ability to meet customer demands.

* * * *

THE Federal Communications Commission announces its proposed report granting, to the extent indicated be-

low, the petition of the National Bus Communications, Inc., which requested that the commission make available a certain number of the frequencies allocated for the new General Mobile Radio Service for exclusive use of the intercity passenger bus industry directly, or through an organization or organizations formed for the purpose of rendering radio communications service exclusively to the bus industry.

In its proposed report, the commission announced that a further hearing will be held to determine the exact number of frequencies to be assigned to this use, at which hearing requests of other general mobile users will be considered. Under the proposed decision, however, the intercity passenger bus industry would not be required to obtain its mobile radio communication service from an existing general communications common carrier or to share with others the frequencies assigned to the use of the bus industry. The commission will continue to issue licenses for intercity passenger bus communications on an experimental basis for the purpose of determining the exact number of frequencies required for intercity passenger bus use as against the needs of other claimants for space in the portions of the spectrum reserved for the General Mobile Radio Service. After this final frequency determination has been made, a separate intercity passenger bus radio service will be established by the commission to govern the operation of all radio stations furnishing communications exclusively to busses.

The commission pointed out that any particular bus line may, if it wishes, elect to use the General Mobile Radio Service that may be offered by existing general communications common carriers on frequencies which may be assigned for licensing to such common carriers. It further stated that the decision announced at this time should be construed to mean that the commission has approved the specific plans which the National Bus Communications, Inc., outlined regarding its proposed operations or its plans for the use of any specific number of frequencies allocated for the General Mobile Radio Service; nor that it will necessarily limit the licensing of this service to any single industry-formed entity; nor that the commission has determined that the industry-operated method of service in the manner proposed by the National Bus Communications, Inc., will not constitute a communications common carrier service subject to the requirements of the Communications Act.

* * * *

THE Federal Communications Commission has heard testimony at a day-long hearing on its proposal to reserve every fifth frequency modulation channel for one year to provide opportunity to broadcasters not yet ready to enter the FM field.

The proposal, which is the FCC's scheme for meeting the dilemma posed by the great overdemand for FM channels, while at the same time making provision for future applicants, encountered almost universal opposition from the big networks, but was supported by others.

Joseph H. Ream, vice president of Columbia Broadcasting System, Inc., told the commission that Columbia was heartily in favor of the proposed procedure in so far as it would leave the door of opportunity open for future applicants. "However," Mr. Ream said, "by leaving the door open to future applicants it closes the door, in many areas, to qualified applicants who are now ready to provide the public with the superior FM service."

Pointing out that FM "is confidently expected ultimately to supplant today's standard broadcasting as the preferred audio service for the great majority of people," he moved that the commission make additional frequencies available to FM by transferring to FM two of the channels now allotted to television.

Since each of these television channels would provide 30 additional FM channels, a total of 60 more channels would be created for FM, increasing its commercial spectrum space by 75 per cent, with a reduction of only 2½ per cent of the total television spectrum space.

Financial News and Comment

By OWEN ELY

End of Bull Market In Bonds?

THE recent decline in government bonds and upward readjustments in money rates raise serious doubts as to whether the bond market can continue its long advance. Several New York banks recently increased call money rates for the first time in many years, and dealers in commercial paper followed suit. Since neither of these rates are any longer of particular significance in our financial system, the effect is more psychological than practical. A more important factor is the debt retirement policy initiated by the U. S. Treasury last spring, which tends to reduce member bank excess reserves (recently at the lowest level since 1933), and to decrease bank credit available for loans and investments.

Tightening in reserves results when funds held by the Treasury in its war loan account are transformed into deposits for the account of others, against which banks must maintain reserves. One reason why money rates remained low during the war was because the government could manufacture bank credit, and make special rules and regulations favoring loans on government securities. Also, it largely financed the expansion of industry by special advances and loans. But this is not the case with private borrowing now—the old rules apply and the law of demand and supply is back in operation. Hence it seems probable that we have seen the end of the long bull market in bonds—particularly if the government does some long-term financing later this year to reduce its huge amount of short-term paper, which will tend to absorb surplus institutional funds.

While of course it is bad policy to swamp the market with offerings, the utility industry should not lag in its refunding program, or some companies may "miss the boat." The rising trend in interest rates will affect all classes of utility financing, including preferred stocks.

Gain in Utilities' May Income 20.2 Per Cent over 1945

THE Federal Power Commission bulletin reporting May earnings of electric utilities shows a gain in net income of 20.2 per cent, compared with about 30 per cent increase for the first four months. Kilowatt-hour sales were down 7.9 per cent, revenues up 1 per cent, and expenses and taxes up .3 per cent. (Fuel costs increased 2.2 per cent, salaries and wages 15.8 per cent, other costs 5.7 per cent—but depreciation was down 2.3 per cent and taxes 16.8 per cent.)

There was a gain of 3.1 per cent in net operating revenues and 3.3 per cent in gross income. Interest decreased 9.9 per cent, amortization 61.9 per cent, but other deductions were up 19.9 per cent—the net result being a cut of 18.2 per cent in total charges.

Further gains in fuel and miscellaneous costs appear likely in 1946 because of higher coal prices, dry areas, deferred maintenance, etc. But while the gain in net income over last year may taper off further, earnings for the calendar year should show a substantial improvement over 1945. Common stockholders will also benefit in many instances by reductions in preferred dividend requirements.

Wall Street Analyses of Utility Stocks

HAROLD H. YOUNG of Eastman, Dillon & Co. has prepared an 8-page analysis on "Opportunities in Utility Holding Company Preferred Stocks," describing the preferred stocks of American Power & Light, Electric Power & Light, International Hydro-Electric, Long Island Lighting, and Standard Gas & Electric.

He points out that in April, 1946, Florida Power & Light's earnings were more than double those for the same month of 1945, while other American Power & Light subsidiaries showed very substantial gains. While the old plan provided for a recapitalization, with 90 per cent of the new common stock to go to the old preferred shareholders, it is generally assumed that this plan has become obsolete, and that preferred stockholders may be given at least par and accrued dividends—substantially in excess of recent prices. Moreover, regular dividends are again being paid on the two preferred stocks, so that a fair income is obtainable while the investor awaits a final settlement of the integration problem.

Electric Power & Light Company has made considerable integration progress, according to the Eastman, Dillon analysis. The properties of the four remaining electric subsidiaries are interconnected and can probably be considered an integrated system under the Holding Company Act. A new holding company, Southern Electric System, Inc., is proposed to take over control of these companies. A compromise plan, sponsored jointly by Electric Power & Light and Electric Bond and Share, proposes giving the holder of Electric Power & Light first $7 preferred a choice of 10 shares of United Gas common, 9 shares of Southern Electric System, or $192 cash. Thus, assuming that the Securities and Exchange Commission approves this or some similar plan, preferred stockholders seem to be assured of receiving par and arrears — or possibly more, if the new stocks are held for appreciation possibilities.

THE situation with respect to International Hydro-Electric preferred is quite different. The company's assets are valued by Mr. Young as follows: While Gatineau Power has an indicated current market value of around $23,500,000 it seems more conservative to value the stock on a 5 per cent yield basis, or $20,000,000. The equity interest in New England Power Association would have a current market value of around $10,000,000, which seems reasonable based on the relation to other securities involved in the New England Power recapitalization plan, which can probably be consummated without difficulty. The investment in Hudson River Power Corporation and System Properties, Inc., is estimated at $15,000,000 — $5,000,000 notes and advances and $10,000,000 equity interest (based on 10 times earnings).

There is also the $10,000,000 claim against International Paper Company; the cash was actually paid out by the latter company, but has been held in escrow by the court pending an appeal by certain security holders. All these assets added together would amount to at least $54,000,000. After paying the outstanding bonds at par and accrued interest, there would be a balance of $16,200,000, equal to $114 a share on the preferred stock (which has a claim of $91.85 and has been selling recently at 65¾). The claim will continue to increase at the rate of $3.50 per annum.

Long Island Lighting Company's recapitalization plan is analyzed on the basis of the *pro forma* earnings figures (now rather old) plus estimated tax savings. It is calculated by Eastman, Dillon that the company's new preferred stock should be worth more than $100 a share, and that the new common might have a price range of $25 to $30. On this basis the old 7 per cent preferred might be worth about $127, and the 6 per cent $113—which figures are about 15-22 points above recent market prices. Realization of the full dividend claims, plus par, might even be an ultimate possibility (about $158 for the 7 per cent and $150 for the 6 per cent preferred).

STANDARD GAS & ELECTRIC COMPANY has enjoyed a very substantial improvement in the values of underlying company stocks and has retired its outstanding bonds through a bank loan. Sale of assets would, it is estimated, provide enough cash to retire the bank loan (now about $42,462,000) and the prior preference stocks with their accrued dividends. The value of the portfolio is estimated as follows by Eastman, Dillon: California Oregon Power common, $9,000,000 (the company recently rejected a bid of $8,840,000, apparently having expected a figure of around $9,360,000); Mountain States Power common, $4,000,000 (based on the current market price of the minority stock); Oklahoma Gas & Electric, $25-$30,000,000 (11 or 12 times anticipated 1946 earnings); Wisconsin Public Service, $18-$20,000,000 (based on earnings estimates for 1946 of $1,387,000 to $1,700,000); Louisville Gas & Electric (Kentucky), $11,500,000 to $13,000,000 (based on 13-15 times estimated 1946 earnings); about $2-$4,000,000 for miscellaneous assets; and finally Philadelphia Company with a current indicated market value of $80,000,000, but which Mr. Young prefers to value at 15 times "immediate prospective earnings" or $65,000,000. These figures when added together indicate values of $199 to $253 for the $7 prior preference stock. While reluctant to pass judgment on the $4 preferred and common stocks, Mr. Young regards the prior preference stocks as "having merit" at recent price levels.

Josephthal & Co.'s monthly utility review contains comments on Electric Bond and Share, Federal Water & Gas, Florida Power Corporation, Long Island Lighting, Southern Natural Gas, and United Corporation. Referring to Electric Bond and Share's plan for retiring its preferred stocks by issuing rights to raise cash, the study estimates, on the basis of recent prices less about 15 per cent discount, that holders of the common stock would be entitled (for each share held) to subscribe to 16/100 of a share of American Gas at $37, and 20/100 of a share of Pennsylvania Power & Light at $19.

UNSUBSCRIBED shares would be sold, and a bank loan obtained for any additional funds required; the latter would later be retired through sale of Birmingham Electric common and Carolina Power & Light common received in the distribution of National Power & Light holdings. Regarding American Gas & Electric, the "subscription privilege at around 12½ times earnings should be very attractive." With respect to Pennsylvania Power & Light "the subscription privilege may appeal to those interested in a somewhat speculative though improving operating company equity."

Regarding Federal Water & Gas, Robert Miller of Josephthal & Co. estimates that about $10 per share in value of Scranton-Spring Brook Water Service common could probably be distributed to stockholders; the principal attraction however is in the holdings of Southern Natural Gas.

Southern Natural Gas, according to the Josephthal review, is in an active refunding and expansion program, having recently acquired the common stocks of Mississippi and Chattanooga (gas distribution companies). The company has also raised funds for acquisition of additional stock of Southern Production Company, a subsidiary, for additional

ELECTRIC-GAS OPERATING COMPANY STOCKS

	Where Traded	7/29/46 Price About	Div. Rate	Yield About	Share Earnings 12 Mos.	Share Earnings Amount	Price Earn. Ratio
Arizona Edison	O	20	1.00	5.0%	Mar.	$1.66	12.0
Arkansas-Missouri Power	O	18	1.00	5.5	Dec.	1.29	14.0
Bangor Hydro-Elec.	O	29	1.20	4.1	June	1.96	14.8
Black Hills Power & Light	O	22	1.20	5.5	Apr.	1.96	11.2

Boston Edison	B	52	2.40	4.6	Dec.	2.06	25.3
Calif. Electric Power	C	12	.60	5.0	May	.94	12.8
Central Ariz. L. & P.	O	13	.62	4.8	June	1.09	12.0
Central Hudson G. & E.	S	11	.50	4.5	Mar.	.66	16.7
Central Ill. E. & G.	O	26	1.30	5.0	Mar.	2.27	11.5
Central Vermont P. S.	O	23	1.08	4.7	June	1.83	12.5
Cleveland Elec. Illum.	C	47	2.00	4.3	Mar.	2.20	21.3
Commonwealth Edison	S	35	1.40	4.0	Mar.	1.97	17.8
Community Public Service	C	38	2.00	5.3	Mar.	2.60	14.7
Concord Electric Co.	O	49	2.40	4.9	Dec.	2.59	19.0
Connecticut Light & Power	O	68	3.25	4.8	June	3.39	20.1
Connecticut Power	O	52	2.25	4.3	Dec.	2.62	19.9
Consolidated Edison N. Y.	S	33	1.60	4.8	Mar.	1.95	17.0
Consolidated Gas (Baltimore)	C	88	3.60	4.1	Mar.	4.83	18.2
Delaware Power & Light	O	23	1.00	4.4	Mar.	1.40	16.5
Derby Gas & Electric	O	28	1.40	5.0	Dec.	1.63	17.2
Detroit Edison	S	27	1.20	4.4	May	1.34	20.0
Duke Power	C	105	4.00	3.8	Dec.	5.03	20.8
Empire Dist. Elec.	O	22	1.12	5.1	Dec.	1.85	11.9
Fall River Elec. Lt.	O	62	3.05	4.9	Dec.	2.90	21.4
Fitchburg G. & E.	O	60	2.75	4.6	Dec.	2.56	23.5
Florida Power Corp.	S	19	1.00	5.3	Mar.	1.49	12.8
Hartford Elec. Light	C	69	2.95	4.3	Dec.	3.29	21.0
Holyoke Water Power Co.	O	23	.80	3.5	Sept.	1.36	16.2
Houston Lighting	S	88	3.60	4.1	June	5.39	16.3
Idaho Power	S	39	1.60	4.1	Mar.	2.86	16.5
Illinois Power	C	32	...	..	Mar.	3.21	10.0
Indianapolis P. & L.	S	30	1.20	4.0	Mar.	2.64	11.4
Iowa Public Service	O	20	.60	3.0	May	1.30	15.4
Lake Superior Dist. Pr.	O	26	1.20*	4.6	May	2.21	11.8
Lawrence Gas & Elec.	O	42	2.50	6.0	Dec.	2.45	17.2
Lowell Elec. Lt. Co.	O	54	2.50	4.6	Dec.	2.37	22.8
Lynn Gas & Elec.	O	101	5.00	5.0	Dec.	4.84	20.8
Michigan Public Service	O	27	1.00	3.7	Dec.	1.66	16.2
Missouri Public Service	C	31	.60	1.9	Dec.	2.74	11.3
Missouri Utilities	O	19	1.00	5.3	June	1.98	9.6
Montana-Dakota Utilities	C	15	.60	4.0	Mar.	1.13	13.3
Mountain States Power	C	30	1.50	5.0	May	2.90	10.4
New Bedford Gas & Edison	O	85	4.00	4.7	Mar.	5.05	16.8
New Orleans Public Service	O	40	1.40	3.5	May	2.74	14.6
Newport Elec.	O	34	1.60	4.7	May	2.26	15.0
Pacific G. & E.	S	43	2.00	4.7	Mar.	2.60	16.6
Penn. P. & L.	S	23	.80	3.5	Apr.	1.20	19.2
Penn. Water & Power	C	76	4.00	5.3	Dec.	5.07	15.0
Phila. Electric	S	29	1.20	4.1	Mar.	1.68	17.2
Pub. Serv. of Colorado	S	38	1.65	4.3	Dec.	2.50	15.2
Pub. Serv. of Indiana	O	39	1.80	4.6	May	3.15	12.4
Pub. Serv. of N. H.	O	35	1.56	4.5	June	2.47	14.2
Puget Sound P. & L.	O	16	1.00	6.3	May	1.79	9.0
Rockland Light & Power	O	11	.50	4.6	Dec.	.68	15.2
San Diego Gas & Electric	O	19	.80	4.2	May	.92	20.7
Scranton Electric	O	20	1.00	5.0	Dec.	1.04	19.2
Sierra Pacific Power	O	29	1.40	4.8	May	1.95	14.9
Sioux City Gas & Elec.	O	30	1.30	4.3	June	1.85	16.2
Southern Calif. Edison	S	39	1.50	3.9	Mar.	1.98	19.7
Southwestern Pub. Service	O	34	1.80	5.3	May	2.23	15.2
Tampa Electric	C	35	1.60	4.6	May	2.37	14.8
United Illum.	O	49	2.00	4.1	Dec.	2.15	22.8
Utah P. & L.	C	24	1.20	5.0	June	1.77	13.6
West Penn. Power	O	30	1.40	4.7	Mar.	1.41	21.3
Western Mass. Cos.	O	42	1.80	4.3	June	3.41	12.3
Wisconsin Elec. Power	O	22	.70	3.2	Mar.	1.22	18.0
Averages				4.5%			16.0

S—New York Stock Exchange. C—New York Curb Exchange. B—Boston Exchange. O—Over counter. * Less Wisconsin tax.

drilling in the Carthage field and elsewhere, for added purchase contracts, and for pipe-line construction. *Pro forma* earnings, adjusted for recent changes and for the rate cut effective May 1st, and including undistributed subsidiary earnings, are estimated at around $2.87 a share. The dividend rate of $1.25 per share appears conservative, since serial bank loan maturities can largely be met out of depreciation charges, and this tends to explain the 4 per cent yield.

Florida Power Corporation's September quarterly dividend of 25 cents indicates a $1 annual rate which gives the stock a better-than-average yield. Earning power of $1.50 a share or better has been forecast.

LONG ISLAND LIGHTING and its subsidiaries are facing a number of regulatory problems but eventually the company may conform to very high accounting standards. There is some confusion and time-consuming procedure because of dual regulation by the SEC and the public service commission. However, higher values for the preferred stocks should be gradually reflected as regulatory problems are cleared.

Commonwealth & Southern Reorganization Plans

THE SEC has announced that hearings will be reconvened September 10th to discuss the four recapitalization plans filed in March — the company's own plan (the fifth which it had filed over a period of time), together with three others filed by security holders.

President Whiting on July 11th sent a communication to stockholders calling attention to the hearings, summarizing the various plans, and reciting the latest financial developments including current earnings. Ohio Edison recently sold 204,153 shares of common stock, realizing $8,021,171; and Consumers Power Company plans to sell enough common stock to obtain $20,000,000. Both companies will use the cash for additions and betterments, and the market prices established through the sales will facilitate fixing the terms of preferred stock exchange tenders. It is also proposed to set up a new Southern Holding Company, and to sell some of its stock for improvements (also establishing a market value).

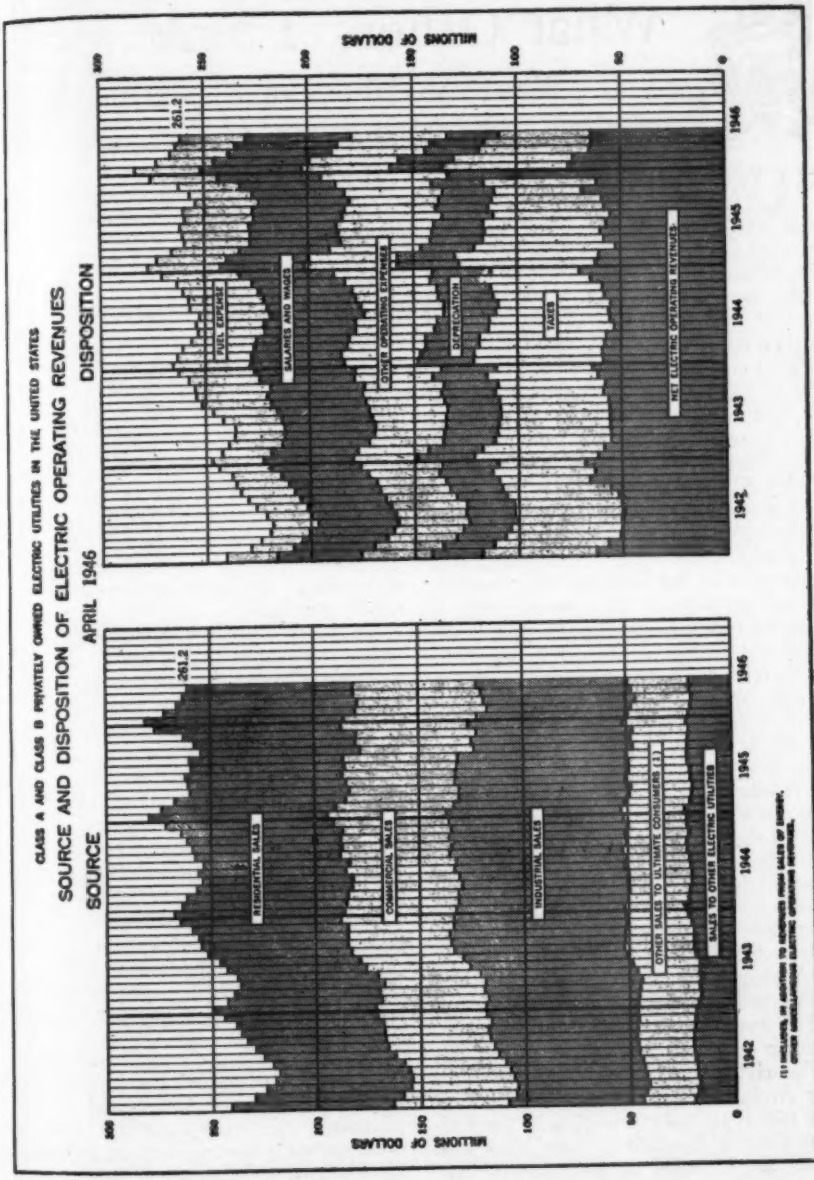
The company has asked permission to use $5,000,000 of treasury funds to repurchase its own preferred stock, and it also hopes to retire the remaining stock through voluntary exchange plans or by the payment of "liquidating dividends in kind."

Powdered Coal May Be Answer To Increasing Fuel Costs

SCIENTIFIC AMERICAN recently carried an article, "Powdered Coal Drives a Revolutionary Engine," which was summarized in the *Reader's Digest*. Briefly, the new engine is a coal-burning gas turbine developed at Johns Hopkins University and operated for some months. Bituminous coal is reduced to the fineness of confectioners sugar by an "ingenious but simple mechanism" and then shot into the combustion chamber. The engine was developed (through the cooperative efforts of a group of railroad and coal company executives) by John I. Yellott, head of the Institute of Gas Technology in Chicago. One of the difficulties was to remove the abrasive ash particles but this was done by the use of a wartime invention, the aerotec dust precipitator, which uses centrifugal force.

The net result, it is claimed, will be a new locomotive three to four times as efficient as today's steam locomotive. It will use no water, and have only half the size of a Diesel electric delivering similar power.

Possibly it would not pay to substitute the new type of burner for efficient utility generating plants, but it certainly should be of interest for replacement of obsolete plants in areas where water is somewhat of a problem, or where cheap low-grade coal is close at hand.


CLASS A AND CLASS B PRIVATELY OWNED ELECTRIC UTILITIES IN THE UNITED STATES
SOURCE AND DISPOSITION OF ELECTRIC OPERATING REVENUES
APRIL 1946
SOURCE
DISPOSITION
MILLIONS OF DOLLARS
261.2
RESIDENTIAL SALES
COMMERCIAL SALES
INDUSTRIAL SALES
OTHER SALES TO ULTIMATE CONSUMERS (1)
SALES TO OTHER ELECTRIC UTILITIES
FUEL EXPENSE
SALARIES AND WAGES
OTHER OPERATING EXPENSES
DEPRECIATION
TAXES
NET ELECTRIC OPERATING REVENUES
1942
1943
1944
1945
1946
Federal Power Commission

What Others Think

The TVA Book of Revelations

"UNLESS we straighten out our thinking in the matter of 'authorities' and decentralization and regionalism, we shall drift into a state of confusion in national administration which will make our government good hunting ground for bureaucracy far removed from direct democratic control."

That understatement was made in May, 1945, in the *Cleveland Plain Dealer* by Arthur E. Morgan, first chairman of the Tennessee Valley Authority, in an article discussing the proposed Missouri Valley Authority, a project which would cost about $1,500,000,000, according to Governor M. Q. Sharpe of South Dakota.

In addition to being an unintended condemnation of the Congressmen who permitted proponents of a social state to gain the foothold requisite to control of a people by voting for the TVA, Mr. Morgan's remarks were a prophetic warning which the public utility industry should heed before its aggressive opponents, larger in number today than they were thirteen years ago, gain complete control and ownership of the industry. His words are the whispered soundings of a signal for an all-out defensive attack to stave off threatened government ownership of the electric light and power business in this country—not by bureaucrats, but by men who are diametrically opposed to the democratic form of government.

A singularly devastating weapon for that attack was wrought for the industry a few weeks ago by Huet Massue, a consulting engineer of Montreal, in his "Factual Analysis of the Tennessee Valley Authority," which was presented at the recent annual convention of the Edison Electric Institute at New York city. Here are included the most comprehensive, graphic, and indisputable arguments ever written against the TVA. Nothing previously prepared on the subject approaches the quality and candor of this study.

As propaganda based on thoroughgoing, fact-revealing research, it is incontestable.

However, the book may still fall far short of its mark unless the leaders of the industry find some way, in their own behalf, of studying it and retelling the basic story in simple, direct layman language. It will have to be told to Congress and to the millions of people who have unreservedly supported the TVA and other economically questionable and politically dangerous Federal business projects for more than a decade to the tune of almost a billion dollars.

This power project, together with proposed duplications of it, many of which are under construction, portends a fast-growing threat to the free enterprise system and ominously forecasts a social state to replace it.

The author's foreword is testimony of his exceptionally discerning ability to digest facts—in this instance, an almost insurmountable task as evidenced by the apparent inability, or possibly apathy, of any man or group, even among utility men, in the United States or elsewhere, to approach M. Massue's accomplishment. And his presentation of these facts goes far to offset the claims of sweeping benefits which are said to derive to the good of the country from the TVA.

One outstanding characteristic of the book, an attribute all to infrequently marking the guarded oral and written statements of men in the utility industry, is its author's fearlessness; he expresses his professional opinion with a refreshing frankness. Indicative of this are excerpts from his foreword:

The analysis . . . brings out the fact that . . . all possible subterfuges have been resorted to in order to show it [TVA] as an outstanding success . . . The reported investment is far below the reality . . . Allocation of the investment to navigation, flood control, and power was a means to deceive the public about the true cost of the production of power . . . Reported cost of operation is altogether fictitious as no interest charges are considered on the $700,000,000 appropriation of the government . . . loss of taxes is just forgotten . . . The adverse results are of great material consequence to the public and the social structure, as well as destructive of America's economic strength.

But again, the directly self-imposed obligation of utilizing the results of his findings rests with the industry. The facts have to be taken out of the charts, tables, and graphs and presented to the man in the street, the average American, the white collar worker, the taxpayer whose funds make possible the TVA. He is the important person the industry has been groping for through its letters to stockholders, off-the-record "chats" with newspapermen, and innumerable congressional hearings on and off for more than ten years, with discouragingly little success. On the record, none of these channels has produced the effect sought: to stop Federal expansion of power where it cuts into private business.

However, despair of the industry adopting an aggressive spirit may be averted. Some companies are beginning to recognize the importance of having an understanding public—their customers. Continuation of a 3-media advertising and publicity program (newspapers, magazines, and radio) started a few years ago by a group of utility companies has grown to include about 60 per cent of the nation's power companies. This would seem to indicate an industry awareness at long last of means for solving much of its problems. Its success would seem more assured by a more vigorous attitude; by an offensive, rather than a defensive, presentation of the problems which beset the industry.

For example, flat, factual statements of opposition to the continuance of Federal power projects, bolstered by an explanation of costs to the listening and reading audiences would engender a wider personal interest on their part. One invariably finds the rooter supporting the aggressor—especially when he is a vigorous aggressor and is in the right.

If the consumer can be shown that he, personally, is supporting the TVA, that he gets nothing in return but actually is advancing the growth on an undemocratic organism, results will soon show for themselves. His personal support will follow the arousing of his personal interest.

Basically, the industry is confronted with a simple problem. One that can be told convincingly to every man, woman, and child who desires no deviation from our originally constituted form of government.

The problem is to dissuade your Congress from furthering competition by the government in the power business. How many Congressmen are really convinced that the industry actually is not opposed to government ownership and control of river development? That, as a matter of fact, the industry sees it as a function, a duty, of our government to develop the rivers—but only when development and control are not in violation of the prescribed functions of government; only when such control is not in conflict with the rights of free men operating as free enterprise? As for electricity generated incidentally to flood control and navigation, such power should be sold to the private companies or used only for direct Federal purposes. It should not be sold at prohibitively lower, tax-free rates that threaten business-managed operation of the electric power business.

It has been said over and over again that private enterprise pays Federal taxes, state taxes, and many local taxes but that with the exception of a negligible amount of local taxes, the Federal government pays no taxes. This statement alone is an almost terrifying threat to the foundation of our form of government—but how many people in government-served power areas know or believe this? Do they know that such a condi-

tion opens the very same channels through which dictatorships have risen to the control of the individual and his earthly destiny? Do they know that public power is an infringement on the rights and privileges inherent in a democracy?

THIS is an election campaign year, and it offers the industry a great opportunity to again tell its story to the Congressmen who are preparing their speeches hopeful of election or reëlection. Many campaigners will wage their fights on platforms directly contrary to your cause. They have espoused a cause that "speaks easily" to their constituents. But, equipped with all the facts that can lay bare the threat to the voters' right to vote, their speeches will strengthen their own chances to represent the people, and will further strengthen the fight to preserve democracy.

Returning to the original purpose of this article, evidence of the author's objective search for "all the facts" appears in the record of his extensive itinerary through the valley. In his report on the trip, Monsieur Massue said it began in Knoxville, from which point he visited the Norris dam with its 105,000 kilowatts of installations, the 60,000-kilowatt Cherokee power plant, and the 64,000-kilowatt Fort Loudoun project. "On my way to Fontana storage and power project," he said, "I saw the Calderwood and Cheoah power plants of the aluminum company." Referring to the Fontana dam, he noted that "there are still 2,000 men working on the beautifying of the approaches to the dam."

When he arrived at Chattanooga, he recalled that when TVA was formed the Public Works Administration granted the city "$3,000,000 with which to build its own electric distribution system." From there he went to the Chichamauga and the Hales Bar projects and explored the territory as far as Atlanta, Georgia, and Birmingham, Alabama, which he visited on his way to the Wilson dam and the chemical plant, developed in 1918 and later responsible for formation of the TVA. The installation at the Wilson plant now amounts to 335,000 kilowatts, M. Massue said.

LEAVING Florence, Alabama, he went to Nashville, Tennessee, and then to Paducah, Kentucky, located at the mouth of the Ohio river. He then went back to Gilbertsville, the site of the $115,000,000 Kentucky dam, which he described as "a very impressive structure, 8,000 feet long, which required 6,000,000 yards of excavation, 1,400,000 yards of concrete, and 4,000,000 yards of earth and rock fill." After Paducah he traveled to Memphis, Tennessee, "another city which in 1933 received a $3,000,000 free grant to build its own distribution system in order to become a customer of the TVA. From there I went to Vicksburg, the site of the Mississippi experimental station," and proceeded to New Orleans.

Commenting on his trip, M. Massue said:

> After such a trip as that which I have just made, I can well understand the enthusiasm shown by the many writers who praised the accomplishments of the TVA. What they saw is without any doubt the best that engineering experience, imagination, and enterprise could design and carry out. All the structures are indeed very impressive in their architecture and their hugeness, and the many power plants include the most recent refinements in the art of hydroelectric power construction. What they [the writers] told had to be said, for, without the extensive propaganda which accompanied the development of the TVA, its growth would never have been possible as the funds required would never have been made available. The terracing and beautifying which, without any consideration of cost, had been and is still carried out at all projects, has added much to their attractiveness which is admired by thousands of visitors coming from all parts of the country.
>
> To most visitors, the fact that $115,000,000 were put into Kentucky dam, or that Wilson dam cost the country some $90,000,000, or that the Fontana project required more than $60,000,000 to develop, does not matter. They are just impressed by the majesty of the undertaking. It can be said that each structure carries its own propaganda. It is a propaganda most damaging to private electric utilities which, in the first place, must limit to economic dimensions the size of the structure they build and, secondly, must meet the cost of interest and that of onerous taxation, things which the TVA does not do.

APROPOS of M. Massue's reference to the propaganda which is carried by each of the TVA structures, Senator Lister Hill of Alabama, said, during a congressional debate when he sought an investigation of power lobbying on June 18th, that "the people of the valley know ... the dams are producing vast amounts of power at low cost and are still earning a fair return." He spoke at great length that day, but did not point out that many of these same people are getting benefits paid for by taxpayers who are far removed from the region and any of its "benefits."

Continuing, M. Massue said:

> Another impression which I brought from my trip is that whenever the effect of the TVA on the manufacturing industry of the region is discussed, consideration should also be given to other factors of growth. I am thinking particularly of the cities of Birmingham and Memphis, whose growth is entirely due to factors other than TVA. While in Knoxville, Chattanooga, Florence, and Nashville I inquired about the manufacturing development of the last twelve years and was invariably told that it did not amount to much.

In conclusion, M. Massue said:

> I returned from my trip more than ever convinced of the necessity for privately owned electric utilities to counterbalance the effect of the insidious propaganda of such organizations as the TVA by an unrelenting exposé of the facts, and by an alertness inspired by the thought that only private institutions can bring out the well-being and general prosperity which everyone so desires.

Completion of the trip consumed more than a year of M. Massue's time.

In a series of colored "slide" films the author commented on the high points covered in his book. The large attendance at that particular EEI session was indicative of the extent of interest in the subject, and many members of the institute returned to their offices with a new conception of the magnitude of the problem which confronts them.

It might also be stated here that the interest displayed by some utility men present that day was clear evidence that they were hearing for the first time much information they might well have known before that time. A great many busy utility men, understandingly, limit their interest to their own service areas; "the TVA is too far removed from us to be a source of worry," some say in effect. This can be construed as giving passive but nevertheless tacit approval of efforts of those in favor of public power who are ever watching the potential market.

IT was this writer's original purpose to confine this article to a broad review of M. Massue's excellent work. However, the success of Federal power proponents, contrasted with the failure of the industry to effectively offset it since 1933, prompted the deviation.

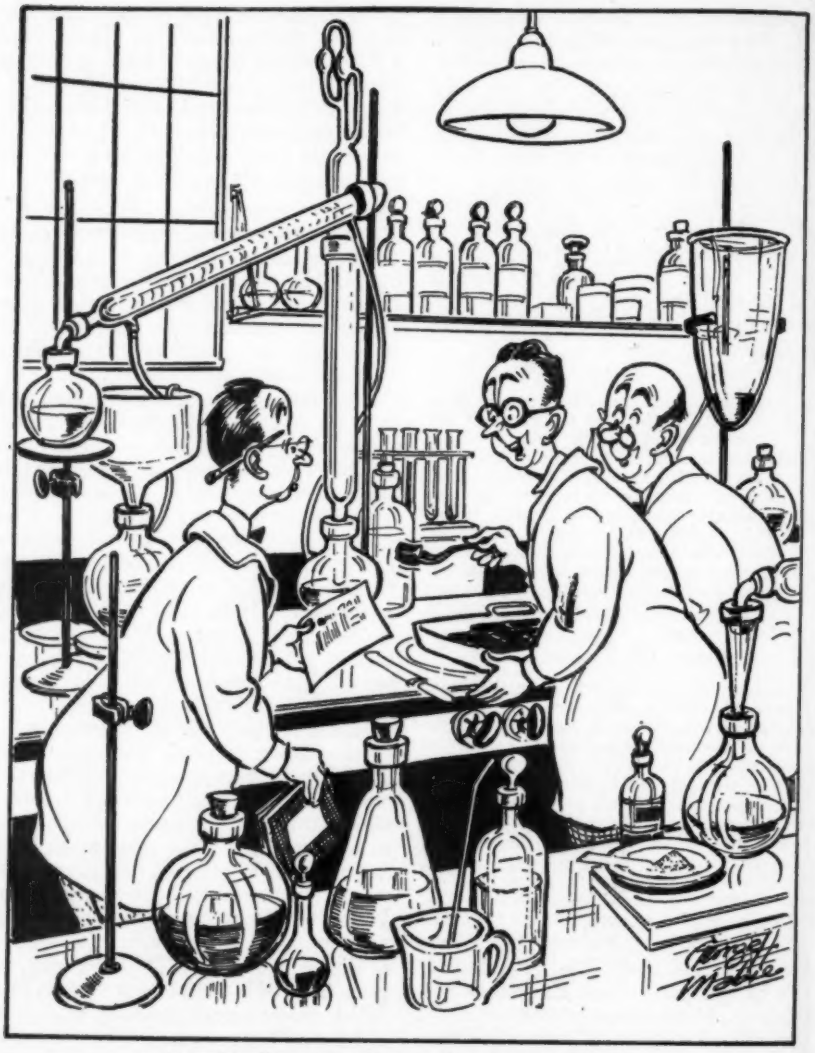
Condensing some of the high lights of M. Massue's book, we find the following:

TVA's investment in hydroelectric projects averages $338 per actual kilowatt installed, or more than two times the average investment in hydroelectric facilities of privately owned utility companies in the United States ($167) and in Canada ($162).

Operating Costs: TVA's reported costs of $30,100,000 for 1945 would have been $55,200,000 had TVA paid interest on the $705,000,000 appropriation made to TVA by the Federal government.

In addition, through TVA operation, the United States lost all, and the state and local governments a part, of the taxes which would have been levied upon private operation. TVA has never paid more than 7.3 per cent of its gross revenue in taxes, while private utilities in the United States have paid as much as 24.1 per cent.

Financial Results: TVA's annual report for 1945 (fiscal year ended June 30th) showed net operating income of $18,606,000, a return of 4.8 per cent on the $391,000,000 (less depreciation reserves) "net investments" for power facilities. The 1945 surplus of $9,300,000 reported by TVA, Massue says, includes no provision for interest charges or payment of taxes, such as paid by private utilities. Considering the cost of interest to the government, and the total of taxes lost to all governments, national and lo-



"EXPERIMENT 927, SYNTHETIC RUBBER, TASTES EXACTLY LIKE SIRLOIN STEAK!"

cal, because of TVA's replacing private utilities, the operation of TVA is found to have resulted in annual deficits reaching as high as $25,900,000 in 1942. Even larger deficits are forecast for the post-war years.

Navigation on the Tennessee: M. Massue's analysis points out that as a navigation project, the TVA also is inefficient and uneconomic. He says the cost of operating the Tennessee river waterway, approximating $8,000,000 annually,

amounted to about 5 cents for each one of the 161,000,000 miles of traffic in 1944, or 5 times as high as the average cost of transportation on American railroads, and about twice the cost of motor transportation on American highways. Notwithstanding the war and the resulting congestion of the railroads, traffic on the Tennessee totaled only 2,900,000 tons in 1943 or only 15 per cent more than the 1930 tonnage of 2,500,000 tons.

Flood Control on Tennessee: Compared with estimated average annual flood damages of $1,800,000, annual operating costs, including capital charges and production losses of flooded lands, amount to as much as $18,000,000 annually for flood control in the Tennessee valley, according to M. Massue's estimate.

IF M. Massue's "Factual Analysis of the Tennessee Valley Authority" were rewritten in a style comparable to David Lilienthal's "TVA—Democracy on the March," the people of this country and their representatives in Washington would be roused to a defense of free enterprise that would go far to stop the tide of public power that threatens to wash over and suffocate business-managed utility companies. This, despite what Henry Agard Wallace, in the rôle of book reviewer, said of Mr. Lilienthal's biased appraisal of the TVA: "Curiously enough, there is nothing in this book to offend nine out of ten businessmen." This writer has never met one of the nine—but he has met quite a few who are the composite of the tenth.

—JOHN P. CALLAHAN.

Wind-up of Long Series of FPC Natural Gas Hearings

THE final hearings in the Federal Power Commission investigation into the natural gas industry, held in Washington, D. C. (reported upon on page 171 in the August 1st issue of PUBLIC UTILITIES FORTNIGHTLY), continued on through most of the month of July. Much of the testimony presented from the first of that month, at the various sessions, was that of witnesses representing bituminous coal interests, and makers of coal using and processing equipment for steam-electric generation plants.

The approach of these coal people was mainly from the standpoint of setting forth objections to the increased introduction of natural gas as an industrial fuel, especially along the northeastern seaboard, where coal has long been the chief fuel supply. The principal reasons advanced in support of these objections were the attractions offered to industries in the lower cost and availability of natural gas, to the consequent disadvantage of coal, resulting in a curtailed market for the latter fuel.

Statements of this character met with critical questioning by counsel for the natural gas industry, and, in several instances, the inference was that the coal interests have been slow to adopt research methods to develop more uses for their product, and also that they were aiming to avoid the consequences of having to meet competition, by seeking some sort of protection through action by the FPC which would limit the sale of natural gas for industrial fuel use.

FOLLOWING the appearance of the representatives of the coal industry, several witnesses appeared on behalf of the Natural Gas Industry Committee. Among the first of these was E. Holley Poe, consultant to the committee, who read a paper—"Dependability of the Natural Gas Industry to the Public Service." He said:

> Delays in extending natural gas service to more sections of the country are attributed largely to the Federal Power Commission's rules permitting practically unlimited interventions by the coal and railroad industries.
>
> FPC's administration of the Natural Gas Act often has given the impression of con-

sidered solicitude for the coal and railroad interests, with which it has no administrative relationships. FPC often has given the impression that it felt called upon to act in the unappointed capacity of umpire in the industrial competition between the coal and gas industries.

Mr. Poe declared that the natural gas industry does not fear the competition of the coal industry, but it does fear the possibility of the application of sociological criteria in FPC's administration of the Natural Gas Act. These apprehensions, he added, will continue until there are substantive assurances that the procedures, under which the act will be administered in the future, will more nearly conform to the intentions of Congress as they are widely understood in a simple readying of the act itself, devoid of any judicial or administrative interlineations. As to this, he commented:

> My reading of the Natural Gas Act does not reveal any expressed authority excepting that over the interstate transportation of natural gas, for resale for public consumption.
>
> The jurisdiction is confined to natural gas; it does not include railroads, the coal industry, nor their respective labor groups.

OBSERVING that the coal-railroad-labor groups filed 1,570 interventions that were related to 63 applications to FPC for required certificates in proposed natural gas service expansions, since 1942, Mr. Poe observed:

> The purpose of the Natural Gas Act, in my judgment, was clear for all to understand. Thereby, a duty was imposed upon the subsequent administrators to secure adherence to the letter, but certainly not to overlook the spirit.
>
> I do not believe that the Congress ever intended some of the results which have developed in the past administration of the act.
>
> Electricity, coal, natural gas, petroleum, water power, and any other source of energy cannot claim priority in any market in view of the pact that is being maintained by new discoveries, their development and utilization.
>
> The technical research that will develop new uses and better forms of the older uses, will accelerate the socially beneficial economic forces having the best advantages for the producers, competitors, investors, and consumers.

The attention of the Federal Power Commission was called to the dependability of service of the natural gas industry by Mr. Poe. He cited the increase of more than 50 per cent in natural gas production during the war period, and added that the industry will continue its research program to develop further improvement.

Referring again to the coal industry, the witness stated:

> Unhealthy labor relations within the coal industry seem to me to be its greatest problem. As another public service industry, the coal industry just does not seem to be able to give dependable service to an already adequate market, a market that can be exploited still further.
>
> It may be trite to say so, but it is truly an injustice to our country to slow the progress of the natural gas industry that is operating dependably in the public service, and permit the coal industry to go its wobbly way, suspending operations and blocking gas, both at the same time.

Continuing, Mr. Poe expressed the opinion that the gas and coal industries should work out their competition for the business they can develop, with technology and economics as the important considerations to be placed before the buying public. It was his view that such a procedure would bring about progress for both industries, and such progress would extend in ever-widening circles throughout American industry.

IN closing his statement with a series of recommendations to the Federal Power Commission, Mr. Poe pointed out:

> The commission, the natural gas industry, and the public whose interests are the concern of both, will certainly be well served by the review and appropriate revisions of the rules and hearing practices governing interventions.
>
> The records of hearings in certificate cases reveal an apparently free granting of the privilege of intervention to some who have no actual status as competitors or who cannot claim appearance on the grounds of broad public interest.
>
> Concern for the supply of natural gas, and therefore the dependability, can be justified only when the reserves curve shows a continuing tendency to dip toward the consumption curve.

WHAT OTHERS THINK

Dr. E. DeGoyler, geologist of Dallas, Texas, testifying as to the outlook for natural gas supply in the future, stated:

> The natural gas reserves of the United States are estimated to be sufficient to meet demands for more than thirty years at the current rate of withdrawal, and further substantial expansions of the reserves are anticipated.
>
> For broad considerations of national planning we would be well advised to consider our gas reserves to be of the order of magnitude of 200 trillion cubic feet.
>
> There should be no apprehension as to the ability of the industry to meet market demands in the foreseeable future.
>
> We continually hear that if the use of natural gas is not restricted, the increasingly greater annual consumption will soon exhaust the gas resources of our nation.
>
> On this point, it should be noted that the ratio of annual gas take to proved resources is twice as good as the similar ratio is for the oil industry.

The subject of atomic energy came up at these hearings, and what effect its possible use as fuel in the future might have upon the natural gas and coal industries. This question was discussed by Dr. E. R. Gilliland, professor of chemistry, Massachusetts Institute of Technology. His testimony indicated that, considering the potentialities of atomic energy, there would be little justification for adoption of the policy advocated by some of the coal and railroad interests to restrict the markets and use of natural gas on the theory that the reserves of that fuel are relatively small.

DR. GILLILAND told the commission's investigators:

> To the list of the older, conventional fuels there has now been added atomic energy with potentialities which dwarf the resources of present fuels.
>
> While this new source of power may not completely displace older fuels such as wood, coal, oil, and natural gas, it is certain to reduce man's dependence on them.
>
> Producing heat by atomic reactions assures for the future an almost inexhaustible store of energy which can eventually make relatively unimportant, both geographically and quantitatively, the availability of common fuels.
>
> Even making a pessimistic estimate, it is difficult to foresee how practical industrial atomic power could be delayed as much as fifty years.
>
> The importance of the development of these units should not be overlooked in any survey or appraisal of our national energy resources.
>
> Future atomic units will undoubtedly be larger, and if desirable, could easily exceed the power output of the large hydroelectric dams in our Pacific Northwest. Units of this size could be located in many localities in the United States. In fact, atomic power units are more adaptable to large units than to small ones.

In a paper presented by Dr. W. K. Lewis, professor of chemical engineering, Massachusetts Institute of Technology, it was held that natural gas is not an irreplaceable resource. Dr. Lewis declared that commercial production of synthetic gas from coal is in no sense economically out of the question in the not distant future. He said:

> Even by present processes, the cost of manufacturing gas from coal need not be prohibitive and with certain contemplated improvements, now actually the subject of advanced research, the cost of synthetic gas might easily be brought below the delivered cost of natural gas in many areas of this country.
>
> Adding to this the outlook for atomic power, it conceivably might mean that, far from concern over future shortage of gas, we will never actually use up all we have.
>
> The gas reserves represented by the coal deposits are enormous—giving about 2,500 year's supply. Even after allowing for large-scale manufacture of synthetic liquid fuels also from coal and assuming continued use of solid coal at the present rate of consumption, there is coal enough in the United States to supply gaseous fuel for a thousand years or more.

ADDITIONAL testimony was given on behalf of the Natural Gas Industry Committee by two engineers with E. Holley Poe & Associates. J. E. Flanders presented three papers devoted to various phases of the transportation of natural gas—its "Development," "Cost Behavior," and "A Cost Study." These papers treated the subjects in considerable detail. There was then presented by Charles R. Bellamy, "A Case Study of Natural Gas Distribution," in which it was stated that American families, who heat their homes and cook with natural gas, were saved $147,600,000 during 1944 as a result of the large industrial use of

this fuel. Mr. Bellamy continued:

When these direct benefits, which present domestic customers receive from the industrial gas business, are combined with the indirect benefits which the general public receives from the efficiency and economy of natural gas in many industrial operations, it is at once apparent that the best interests of domestic gas customers and of the public as a whole are served by measures which fairly encourage the industrial use of gas.

While the reactions resulting from the curtailment of industrial gas would be unfavorable to the industrial consumers, gas companies and pipe-line companies, the worst sufferer of all would be Mr. Domestic Customer.

The conclusion is inescapable that the expansion of industrial markets for gas has allowed the price of commercial and domestic gas to decrease.

Approximately 9,000,000 homes in this country are now served with natural gas, and about 35,000,000 people thereby have a clean, convenient, and economical fuel available for their domestic uses, including cooking, water heating, refrigeration, home heating, and home cooling.

All these purposes could be handled by manufactured gas with equal utilization efficiency, but the cost of the gas would range from two to five times as much. For home-heating and home-cooking purposes, this increased cost would be prohibitive to a large percentage of present natural gas customers. It is solely because of this price differential that domestic consumers as a class make far greater use of natural gas than they do of manufactured gas.

The question arises, therefore, as to why natural gas is so much more economical for home use than manufactured gas. The obvious answer is, of course, its lower production cost. This is the correct answer in so far as it goes, but it is somewhat superficial and certainly not a complete one. True, the relatively low price of natural gas to the domestic consumer is due largely to its low production cost. But the real reason why this is true is the large volume of industrial gas business that the natural gas attracts because of its favorable price.

MR. E. Buddrus, of Panhandle Eastern Pipe Line Company, and some other witnesses, testified in the closing days of the hearing upon the transportation and various other phases of the conduct of the natural gas business.

During these sessions there was considerable cross-examination of witnesses, particularly of certain of those who represented the coal mining interests and the Natural Gas Industry Committee.

At this writing it is understood that this hearing, the final one in a long series in this investigation of the natural gas industry by FPC, has been scheduled to end about July 31st.

—R. S. C.

The Profit Is Not without Honor

"DESTROY *the incentive for profit making, and private enterprise would be ruthlessly driven out, while the government would of necessity become the chief reservoir of capital and credit, with all lines of activity regimented under its direction. Under such a system, all income produced could not be distributed to the workers, as losses would have to be absorbed and reserves set aside for replacements and new equipment as well as for other contingencies. If this were done, there would be much less to be distributed than at present because of the inevitable inefficiency of bureaucratic management. On the other hand, if reserves were not set aside, then in the course of time the whole system would degenerate and living standards would be wretchedly reduced, while economic and personal freedom would be swept away with the country engulfed in totalitarianism. Then there would be no collective bargaining, labor questions would be settled by the henchmen of the dictator, and labor unions would be dissolved.*"

—EXCERPT *from "New England Letter," First National Bank of Boston.*

The March of Events

All Plans for Northern States' Dissolution Disapproved

THE public utilities division of the Securities and Exchange Commission, in a 55-page statement of its views, recommended that the commission disapprove all of the proposed plans for the liquidation and dissolution of Northern States Power Company of Delaware.

Lehman Brothers, Cameron Biewend and Christian A. Johnson, and a preferred stockholders committee submitted three of the plans when the SEC reopened hearings last April after having approved the company's amended voluntary plan.

The staff has suggested that the commission vacate its order approving the company's plan in so far as it sanctions the allocation of stock of the subsidiary, Northern States Power Company of Minnesota. It also recommended that an order be entered pursuant to § 11(b)(2) of the Holding Company Act directing the liquidation and dissolution of the Delaware Company and the making of various accounting adjustments.

The staff, in its conclusions, declared that the stockholders' plan does not meet the necessities of the situation because it does not eliminate the Delaware Company, and the "weaknesses of the Biewend-Johnson plan are so basic that we are unable to suggest any amendments which would make this or any similar plan acceptable."

Also recommended by the staff were:

1. That the Minnesota Company eliminate from its property accounts all plant adjustments and plant acquisition adjustments in accordance with the orders of the Federal Power Commission, that proper charges be made for that purpose to surplus and reserve accounts, and that the stated capital of the Minnesota Company be reduced to the extent appropriate.

2. That the Minnesota Company make appropriate transfer to its depreciation reserve for the purpose of increasing that reserve.

3. That the open account indebtedness owed by the Delaware Company to the Minnesota Company, aggregating approximately $7,500,000, be discharged pursuant to the proposals previously approved by the SEC.

The commission has, in the meanwhile, approved the Minnesota Company's proposal to sell 275,000 shares of new cumulative preferred stock at competitive bidding. Initially holders of the company's outstanding 275,000 shares of cumulative preferred, $5 series, will be given the opportunity to exchange their holdings on a share-for-share basis for the new preferred. Shares not taken in exchange will be sold and the proceeds used to redeem the remainder of the old preferred at $110 per share.

Caffrey New SEC Chairman; Hanrahan Sworn In

JAMES J. CAFFREY of New York has been elected chairman of the Securities and Exchange Commission for the fiscal year ending June 30, 1947. He succeeds Ganson Purcell as chairman.

For nine years prior to his appointment as a member of the commission in April, 1945, Mr. Caffrey served as an administrator, first of the Boston regional office, and then of the New York regional office. He joined the staff of the commission in 1935 as an attorney.

Previous to Mr. Caffrey's election as commission chairman, Edmond M. Hanrahan, also of New York, was sworn in as a member of the SEC.

Mr. Hanrahan succeeds Mr. Purcell as a member of the commission, and will serve out Mr. Purcell's unexpired term which ends June 5, 1947.

Rate Reductions Accepted

IN accordance with new rate schedules accepted by the Federal Power Commission, Southern Natural Gas Company, Birmingham, Alabama, will reduce its rates for interstate sales of natural gas by $1,211,946 (11 per cent) annually.

Company customers and amounts of their annual reductions are as follows, based on sales during 1945: Atlanta Gas Light Company, $702,387; Georgia Power Company, $46,438; Alabama Power Company, $309,287; Alabama Natural Gas Corporation, $36,006; Birmingham Gas Company, $3,989; Alabama Power Company, $11,922; Mississippi Gas Company, $69,645; Mississippi Power & Light Company, $15,429; municipality of Vicksburg, Mississippi, $15,052; and municipality of Pell City, Alabama, $1,791.

The reductions in rates are made in compliance with an FPC order of March 30, 1946, in which Southern Natural was ordered to effect reductions of not less than $1,200,000 annually effective May 1, 1946.

Stock Distribution Proposed

PRO RATA distribution by National Power & Light Company of all its holdings of Birmingham Electric Company, Carolina Power & Light Company, and Pennsylvania Power & Light Company common stock, except 34,146 shares of Pennsylvania Power & Light, to be retained under that company's recapitalization plan, will be made on August 23rd to common stockholders of National, Raymond H. Smith, vice president, has announced.

The distribution, which is to be facilitated through the issuance of fractional receipt certificates to stockholders of record on August 8th, will consist of 545,610 shares of Birmingham Electric, 909,350 shares of Carolina Power & Light, and 682,013 shares of Pennsylvania Power & Light.

The stock is to be distributed on the basis of one-tenth of a share of Birmingham Electric, one-sixth of a share of Carolina Power & Light, and one-eighth of a share of Pennsylvania Power & Light for each share of National. National owns all of the common stock of Birmingham Electric and Carolina Power & Light, and about 28 per cent of that of Pennsylvania Power & Light.

FPC Suspends Rate Schedules

THE Federal Power Commission has suspended new rate schedules filed by Cities Service Gas Company which would require the Gas Service Company, Kansas City Gas Company, and the Wyandotte County Gas Company to take their entire gas requirements without exception for a period of twenty-five years and for 5-year periods thereafter.

While the new rate schedule did not propose any change in rates, the conditions imposed may be unnecessary to the continuation of adequate service, unlawful, inconsistent with the public interest, and place an undue burden upon Gas Service, Kansas City Gas, and Wyandotte Gas, and upon ultimate consumers of natural gas, the commission said.

The old rates, which will remain in effect, are subject to cancellation if and when the purchaser can obtain gas at a lower price. The new rate schedules have been suspended pending a public hearing to be fixed by future order.

Stock Proposal Approved

UNITED CORPORATION'S proposal to pay in full on its outstanding 1,214,699 shares of $3 cumulative preference stock all accumulated dividends, which amounted to $7.50 a share as of July 1, 1946, was approved by the Securities and Exchange Commission, subject to certain conditions.

In order to do this, United will use the entire balance of $4,955,949 of earned surplus, while the $4,114,294 balance will be charged to unrestricted capital surplus, which as of July 1st amounted to $33,207,317.

As a condition to its approval, the SEC stated that no dividends shall be declared or paid on the common stock of United without prior approval of the agency, as long as any of the $3 cumulative preference stock remains outstanding. It was provided, however, that this condition is not to restrict in any manner the right of the corporation to give the common stockholders of United rights to purchase any of the securities owned by the corporation.

Purchase Authorized

THE purchase by New York State Natural Gas Corporation, for $799,998 in cash, of all properties and facilities in New York and Pennsylvania owned by Godfrey L. Cabot, Inc., and Cabot Gas Corporation, with the exception of production properties known as the "Wharton properties" and certain distribution facilities in New York state, has been authorized by the Federal Power Commission.

The company is also authorized to serve gas to the former customers of Cabot, including the Pavilion Natural Gas Company, Producers Gas Company, Southern Tier Gas Corporation, Empire Gas & Fuel Company, Ltd., and a new customer, Rochester Gas & Electric Corporation.

The distribution facilities in Allegany county, New York, are to be transferred to A. W. Black of Wellsville, New York.

Offers Plan to Dissolve

A PLAN has been filed with the Securities and Exchange Commission by Cities Service Power & Light Company for the liquidation of its assets, after which the intermediate holding company in the Cities Service Company system will be dissolved.

Power & Light will transfer all its assets to its parent, Cities Service Company, in consideration for the surrender by Cities of all the outstanding capital stock, consisting of 400,000 common shares, $100 par value, of Power & Light. Cities is Power & Light's sole stockholder.

Prior to the transfer, Cities will make a capital contribution to Power & Light of an amount sufficient to enable the latter to discharge all its liabilities, including a $3,000,000 bank loan.

Called Block to Seaway

"MAIN opposition" to the controversial St. Lawrence seaway and power project is engendered by a "railroad lobby," Senator George D. Aiken, Vermont Republican, told his Senate colleagues.

"Railroads," he said, "have put a brake on transportation progress in this country, and . . . their monopolistic practices should not be allowed to continue to the detriment of other forms of transportation and to the detriment of the national welfare."

Mr. Aiken declared that the railroads "work in concert" with the Association of American Railroads "in skillfully employing subterfuge to make it appear that there is country-wide opposition to the St. Lawrence."

Colorado Basin Agent Appointed

PRESIDENT Truman has appointed Harry W. Bashore, retired commissioner of reclamation, to represent the Federal government in upper Colorado river basin interstate compact negotiations.

The appointment was made upon the recommendation of Interior Secretary Krug.

Resigns As FPC Attorney

MILFORD SPRINGER, principal attorney for the Federal Power Commission, has resigned to join the legal staff of Southern California Gas Company.

Mr. Springer has been a member of the FPC legal staff since 1939 and was actively connected with many FPC legal proceedings. Up to the time he entered the Army he was in charge of the commission hearing and court appeal in the Hope Natural Gas Company Case.

While in the army, Mr. Springer was decorated with the Legion of Merit.

Arkansas

Rate Hearing Ordered

SOUTHWESTERN GAS & ELECTRIC COMPANY has been ordered by the Arkansas Public Service Commission to show cause September 9th why action should not be taken to effect rate reductions to its 18,288 customers in some 60 Arkansas cities and towns.

The company was specifically directed by the commission to show cause why the commission should not: (1) establish the utility's original property costs "less depreciation" as a rate base; (2) eliminate from the company's operating expense "such profits as accrue" to the company's affiliates through purchase of power by the company; (3) order "all amounts in excess of a fair return" on the company's Arkansas properties placed in a special fund for annual refund to the customers; (4) establish a composite rate for "actual maintenance and depreciation expense applicable to the respondent's property" in the state of Arkansas.

Informal conferences, the order said, between commission and company representatives to bring about a reduction had not produced an agreement and preliminary investigations led the commission to believe "there are sufficient grounds to justify a formal investigation."

Southwestern Gas serves Texarkana, Booneville, De Queen, Eureka Springs, Fayetteville, Mena, Nashville, Rogers, Springdale, Ashdown, Dierks, Foreman, Greenwood, Hartford, Lincoln, Mansfield, Murfreesboro, Prairie Grove, Waldron, and 41 other smaller towns and communities.

Asks Authority to Construct

ARKANSAS POWER & LIGHT COMPANY has requested state public service commission authority to construct a 154,000-volt transmission line and two substations in the vicinity of Norfork dam and the projected Bull Shoals dam at an estimated cost of $1,200,000.

Approximately 65 miles in length, the line would extend east from the proposed 5,000-kilowatt ampere substation at Harrison to Norfork dam via the Bull Shoals dam site and north from Harrison to a connection with the Empire District Gas & Electric Company lines in southern Missouri.

California

Immediate Fare Boost Asked

WITH an urgent request that immediate permission be granted to charge new, higher rates on its streetcar and motor coach operation, the Los Angeles Transit Lines filed with the railroad commission a brief in behalf of an earlier application for rate schedule boosting.

Hearings on the proposed increase were held recently when the company asked that the 7-cent fare be increased to 3 tokens for 25 cents, or 10 cents for a single ride, together with the elimination of weekly passes.

The brief explained that working funds should be $1,500,000 in excess of current liabilities if adequate service is to be maintained, but current liabilities—as of May 31st—exceeded cash assets by $500,000.

The petition, in asking that the new rates be placed in effect "without delay," described the proposed fares as "barely sufficient" to guarantee proper service.

In settling a prolonged labor dispute, the commission was informed, the company was required to increase wages about 18 per cent on May 1st.

In addition the brief said that labor costs

have averaged a 77 per cent increase since 1941 —representing about 55 per cent of total operating expenses.

Granting of the increased fares, the company estimated, would boost revenues 11.47 per cent, based on 1945 traffic.

Colorado

Electric Rate Cut Approved

THE Colorado Public Utilities Commission has approved a cut in electric rates estimated to save Sterling and near-by communities $4,330 a year, Chairman Henry S. Sherman announced.

The rate cut would affect, besides Sterling, Atwood, Hillrose, Illiff, Merino, Peetz, Raymer, and several unincorporated communities—Padroni, Snyder, Stoneham, Weldona, and Willard.

Estimated saving to users of electricity was made by Public Service Company of Colorado in applying for permission to make the reduction.

It estimated residential users would save $1,370; business firms, $1,420; power users, $1,240; and that street lighting bills would be cut $300.

Connecticut

Adjustment of Gas Rate Approved

BRIDGEPORT GAS LIGHT COMPANY has been authorized by the state public utilities commission to apply a "fuel adjustment clause" to all gas purchased by its customers and to withdraw its present optional industrial contract rate and to transfer its seven industrial customers, who were served under this rate, to its general rate.

At this time the company has in force a fuel adjustment clause which is limited in scope to all gas purchased in excess of 1,000,000 cubic feet a month, and which applies only to the large customers served under the present industrial optional rate. The new fuel adjustment clause will apply to all gas customers of the company.

The increase in revenues to the company as a result of transferring the seven large industrial customers to the general rate is estimated at $33,500 a year. In addition, it is expected that the proposed fuel surcharge applying to all rate schedules will yield about $233,000 increased revenues.

Georgia

Gets Franchise

TRI-COUNTY GAS COMPANY has been granted a franchise to install a propane gas distributing system in Manchester by the city board of commissioners.

Vice president W. A. Reid, Sr., of the company states that it plans to begin immediately the installation of the gas system and should be ready to give service to Tri-County gas customers within approximately ninety days' time.

Indiana

Alleges Gas Report Suppressed

CITIZENS GAS & COKE UTILITY has been charged by a city council committee with suppression for eleven years of a report urging the use of natural gas in Indianapolis.

The charge was made by Herman E. Bowers, finance committee chairman, in a letter to Thomas L. Kemp, manager of the utility. He wrote:

"We understand that you have never made public the contents of a 1935 report on the Citizens Gas & Coke Utility by W. E. Steinwedell, consulting engineer of Cleveland, Ohio."

The report was paid for from public funds of the utility, the letter went on to say, and that it recommended that straight natural gas be supplied to domestic, commercial, and house-heating consumers. It was also said to have

stated that the cost of manufactured gas was tied to the cost of coal and the sale of the coke by-product.

"If we are correct in assuming that this information is contained in the report," the letter added, "are we to assume that the report was not released because of such information?"

Wholesale natural gas rates, the letter claimed, have declined more than 35 per cent since the Steinwedell report, which insisted the residential and commercial rates could have been reduced 36 per cent.

In answer to the charge, Thomas Kemp said that the availability of a natural gas supply sufficient to "do Indianapolis any good" is at least five years away.

Mr. Kemp said that he was informed at the time that Panhandle Eastern Pipe Line Company could provide Indianapolis only enough to run the city eight months of the year. The four months when the city would be without natural gas would be winter months when use is at the peak load, Mr. Kemp pointed out.

Judge Selected in Transit Case

HENDRICKS Circuit Court Judge Horace L. Hanna has qualified as special judge in the Indianapolis Railways, Inc., rate case now pending in Marion Circuit Court, it has been announced.

Hearings were to begin on August 2nd.

Indianapolis Railways seeks an injunction to set aside a public service commission order denying that an emergency exists and higher fares are necessary. The company also seeks permission to charge a token rate of 8½ cents pending a final commission decision on the higher rate.

Public service commission hearings in the company's main rate case are to be resumed September 23rd.

Ordered to Cut Rates

LOUISIANA POWER & LIGHT COMPANY has been ordered by the public service commission to slash its electric rates. This will represent an annual saving to consumers of approximately $700,000.

The reduction on domestic rates under the new schedule is about 10 per cent. Commercial rates, which apply to stores and small businesses, were reduced in approximately the same degree and substantial decreases were ordered for industrial users.

Agrees to Electric Rate Cut

NEW ORLEANS PUBLIC SERVICE, INC., has agreed to a reduction in electric rates involving an annual saving of approximately $1,000,000 to consumers of electricity in New Orleans, according to an announcement made by Mayor deLesseps Morris and Utilities Commissioner Fred A. Earhart, in a joint statement following a conference with A. B. Paterson, who is president of New Orleans Public Service.

The principal reduction will be to the city's home consumers and the small commercial users.

Kentucky

Plea for Rehearing Denied

A PETITION for a rehearing on Blue Grass Natural Gas Company's application to bid on franchises in several central Kentucky cities and counties was dismissed by the public service commission.

The commission, in denying Blue Grass authority to bid, granted bidding rights to the Natural Gas Distributing Company, Frankfort, a new concern headed locally by John Buckingham, former state treasurer.

The Blue Grass application was denied, it was stated, because the company failed to offer properly scaled maps and showed evidence of financial incapability of undertaking the new business if it could acquire it.

Gets Partial Delay in Case

PETROLEUM EXPLORATION, INC., has asked the public service commission for four and a half months additional time to prepare a case against the reduction of gas rates in 19 Kentucky towns. It was granted only five weeks. The case was continued to August 20th.

The company appeared in response to the commission's order to show cause why its wholesale rates should not be reduced in the face of annual reports showing profits 17 per cent in excess of a fair return.

Petroleum Exploration sells gas wholesale to distributing companies serving Corgin, Somerset, Barbourville, Manchester, Burning Springs, Richmond, Irvine, Ravenna, London, Winchester, Mount Sterling, Cynthiana, Georgetown, Lexington, Paris, Frankfort, Versailles, Midway, and North Middletown.

Loan Approved

THE public service commission has approved an application of the Henderson-Union Rural Electric Coöperative to borrow $560,000 from the U. S. government to build two new substations, to convert existing parts of its system into feeding lines, and to construct 323 miles of new lines for 1,175 prospective

customers in Crittenden, Hopkins, Union, Webster, and Henderson counties.

Workers Abandon Strike

APPROXIMATELY twenty-five Kentucky Utilities Company workers have abandoned a 10-day-old strike for more money and most of the other strikers have asked for reinstatement, R. M. Watt, company president, has announced.

The company, Mr. Watt said, hoped to resume operations at the Danville gas plant, only unit of the KU that has been closed down by the strike.

No decision had been reached on whether those asking reinstatement would be accepted.

Negotiations in the 23-county strike of members of the International Brotherhood of Electrical Workers (AFL) have been at a standstill since a meeting at Danville ended in a stalemate when the company refused to discuss demands for a 25-cent-an-hour pay raise so long as the strike was in progress.

Maryland

Taxi Rates Agreement Reached

THE public service commission and the board of county commissioners have reached an agreement on taxicab rates in Baltimore county, it has been announced.

The rates, as given by Christian H. Kahl, president of the board, were: 30 cents minimum for the first mile; 10 cents for each additional half mile; 25 cents for a call charge between 2 and 4 miles of the cab stand; 50 cents for a call charge between 4 and 8 miles of the cab stand; 25 cents for each unit of additional 4-mile calls; $2 an hour for waiting time; and 10 cents for each bag over two and for each passenger over two.

The new schedule is to be submitted to the Taxicab Operators' Committee.

Michigan

Saginaw Bus Strike Ends

BUS service in Saginaw, interrupted for a month by a strike of nearly 100 drivers and mechanics, has been resumed under a settlement providing a 15-cent hourly pay raise, 5 cents of it retroactive to May 1st. The settlement hinges on an increase in bus fares from 5 cents to 10 cents, or two tokens for 15 cents.

Bus Aid Called Unfair

COLONEL Philip C. Pack, director of the state office of veterans affairs, has informed commanders of protesting veterans' organizations that a state subsidy to provide exservicemen living at Willow Run with a 10-cent bus fare to Detroit was considered a temporary expedient and continuance would be unfair favoritism.

The state administrative board's finance committee was told by Colonel Pack that he would not oppose withdrawal of the subsidy, amounting to $10,000 to $12,000 a month, to cover Detroit Street Railway's deficit in operating the bus line. The DSR said a 75-cent fare would be necessary if the subsidy were withdrawn. The board deferred action.

"This subsidy was authorized last December," Pack explained to commanders of veterans' organizations. "At that time, a group of interested Detroit veterans and DSR officials requested that $4,000 per month be given for this operation. Representations were made by the DSR that after the bus line had operated for a short time, the state could expect it to break even, through payment of full fares by nonveteran riders so that, within perhaps two or three months, the operation would show no loss and no further state subsidy would be needed.

"Believing this to be true, the board, on my recommendation authorized the subsidy on a 4-month trial basis."

New Mexico

Purchase Approved

THE public service commission has approved the application of Southwestern Public Service Company of Roswell, to purchase electric, water, and ice properties of the West Texas Utilities Company of Abilene, located at Dalhart, Stratford, Sunray, and Dumas, in addition to utilities in several smaller Texas Panhandle communities.

According to the state public service commission, the base purchase price of the proposed transaction was fixed at approximately $2,135,000.

New York

Bus Pay Raised

EMPLOYEES of the Green Bus Lines of Queens, Inc., and its subsidiary, the Manhattan & Queens Bus Corporation, have been awarded wage increases approximating 14 cents an hour.

The award was handed down by Philip J. McCook, former justice of the supreme court, named arbitrator by former Mayor F. H. LaGuardia. He directed that the company and union sign a new contract, to run until July 17, 1947. He fixed drivers' wages at 86 cents to $1.09 an hour, and that of mechanics at $1.10 to $1.29 an hour.

The pension plan awarded to the employees provides that a worker who has been with the company for twenty years, is sixty years old, and elects to take advantage of the plan, receive $50 a month.

Get 16-cent Raise

ACCORDING to William Grogan, secretary of Local 100 of the Transport Workers Union, CIO, the 300 employees of the Queens-Nassau Transit Lines, Inc., will enjoy the highest bus wage scale in the city as a result of a new wage agreement with the company.

The contract provides for a wage increase of 16 cents an hour for the first six months and 18 cents for the second six months. This brings the scale up to $1.11 an hour for the first half year and $1.13 for the second half year, Mr. Grogan asserted.

To Offer Simpler Schedules

ROBERT B. GROVE, vice president, disclosed at rate hearings before the public service commission that Consolidated Edison Company of New York plans to submit to the commission, on or about September 15th, an electric rate schedule involving only four different classifications, all uniform for the city.

Under the proposal four rates would be listed: residential; general, for commercial use; "break-down" rates, for private plants tied in with the utility; and wholesale. In 1930 the Edison system companies had 35 rates, none of them uniform, it was explained. This number has been reduced to 14 rates, of which 8 are uniform for the territories served.

Loses Rate Revision Plea

THE public service commission has announced that it has rejected Brooklyn Borough Gas Company's application proposing revision of tariff schedules because it felt that the proposed revision would cause discrimination against some customers.

According to the commission, an investigation into the plan had uncovered many practices that caused discrimination against certain customers.

The public service commission warned the gas company to bring its practices into line with the letter and spirit of the Public Service Law, adding that it would use compulsion to achieve this end if the company failed to act.

Oklahoma

Tinker Bus Fares Boosted

THE state corporation commission has authorized Oklahoma Railway Company to increase its fares to Tinker field approximately three cents.

The actual increase per ride, as explained by Reford Bond, commission chairman, and C. B. Bee, rate counsel, is from 12½ cents to 16½ cents on straight fares and from 12½ cents to 15 cents by using special commutation books authorized by the commission. Present fare has been the equivalent of two tokens, or 12½ cents.

The order as released represents a compromise between the present fare and demands of the company, which had sought to boost the fares to three tokens or 18¾ cents for each trip. Under the new authorized rate one-way straight fares will be sold for a dime and a token, the equivalent of 6¼ cents, making a total of 16¼ cents. This sum would include a transfer to city lines.

Oregon

Transit Lines to Merge

PROPOSED sale of the interurban railway properties of Portland Electric Power Company to Portland Traction Company for $1,000,000 has been approved by George H. Flagg, state public utilities commissioner.

Following a hearing held in Portland late in June, Flagg's order was based on conclusions of fact which found the price for the lines and the Center street shops "fair and reasonable" and that interests of patrons of the interurban lines will be best served by a merger.

The ruling was over objections of the city

of Portland to the effect that the interurban lines are not needed by Portland's mass transportation system, and that their addition might burden it.

Union Rejects Offers

PORTLAND TRACTION COMPANY's offer of a 10 per cent increase, on a sliding-scale for interurban line employees, has been rejected by members of the streetcar union, Local No. 757, AFL.

Further negotiations will be conducted directly with the company, H. L. Thompson, business agent said.

Union members asked, in addition to a wage increase, improved working conditions, including reduction of the work week from forty-eight to forty hours.

Sale Date Extended

FEDERAL Judge James A. Fee has extended to August 29th the date on which the sale of Portland Traction Company to Portland Transit Company must be completed, with the proviso that for each day of the extension Portland Transit must pay to the independent trustees of Portland Electric Power Company the sum of $750.

Pennsylvania

No Action on Trolley Fares

JOHN SIGGINS, JR., chairman of the public utility commission, said that the commission has taken no action on the temporary fare increase asked by the Philadelphia Transit Company.

The chairman pointed out that no formal application has been made by PTC to the commission and that no action can be taken until one is filed.

"All we know about the temporary increase request," Mr. Siggins said, is from a speech by Frederick L. Ballard, PTC counsel. "We had the records searched . . . and did not find an application."

Virginia

To Start Using Natural Gas

E. J. BOOTHBY, vice president and general manager of the Washington Gas Light Company, has revealed that conversion of stoves and furnaces in Virginia areas to use natural gas will be begun in August. Similar work will start in Maryland homes in September, he said, and the work should be completed in both states in November.

At present the company supplies a mixture which consists of about 45 per cent natural gas and the remainder manufactured in Washington plants.

Mr. Boothby said the work, to be done at company expense, will consist simply of adding burners and other new fixtures to present stoves and furnaces to handle the new gas, which is methane.

Pay Raise Given

BUS drivers and mechanics of the Citizens Rapid Transit Company, under terms of a new contract, will receive pay raises making their salaries the highest wages paid drivers of any bus line in Virginia, officials of Citizens Rapid Transit have announced.

The contract raises top operators from 83 cents to 95 cents per hour. Provisions of the new agreement call for a week's paid vacation for workers with a year's service and two weeks for workers with two or more years of service with the company.

Wisconsin

"Work Stoppage" Ends

AFTER tying up distribution facilities of the Milwaukee Gas Light Company for six days, approximately 500 production and maintenance workers, members of the CIO United Gas, Coke, and Chemical Workers Union, returned to their jobs. The complete shutdown of pumping facilities cut off gas service to 200,000 consumers in Milwaukee.

A company spokesman said the union voted to accept the company's offer of a wage increase of 4½ cents an hour with a provision for reopening the wage issue after December 1st upon thirty days' notice. The union had asked 10 cents.

Other issues will go to a fact-finding board immediately, the spokesman said. These include the union's demand for time and one-half pay for Sunday work, holiday pay, and three weeks' vacation for employees with twenty or more years of service.

The Latest Utility Rulings

Conflict of Federal and State Jurisdiction To Be Decided by Courts

THE Arkansas Power & Light Company, according to a decision of the United States Court of Appeals, District of Columbia, is entitled in a suit for a declaratory judgment to a judicial determination as to whether the Federal Power Commission or the Arkansas Public Service Commission has exclusive regulatory control over its official corporate accounting records. The appellate court reversed a district court judgment, in (1945) 61 PUR(NS) 474, dismissing the company's complaint.

The court, it was pointed out, was not presently confronted with the problem of interpreting Federal and state statutes in order to decide which commission has paramount power. The appeal did not present for review a judgment of the lower court holding that either commission had sole regulatory authority. Difficulty in considering the matter was to be avoided by bearing constantly in mind that the case did not have to do with bookkeeping entries or accounting problems as such. The purpose of the suit was merely to find which commission had the sole, exclusive right of regulatory control over official accounts.

The company asserted its willingness to keep two differing sets of accounts in obedience to the dictates of the two commissions to which it is subject, but it alleged that this would satisfy neither commission as both asserted the right to require the company to keep its dominant, principal, primary, and basic accounts in the manner specified by it. The two regulatory bodies insisted on divergent and inconsistent action on the part of the company concerning the same subject matter. The court said:

> . . . when a regulatory commission asserts the right to command that an item which another commission, also claiming jurisdiction, has treated as a valuable asset, be charged to surplus or amortized through charges to earnings, the commission which asserts such right to command unquestionably is saying that accounts kept in response to its orders must be, not mere memoranda, but the official corporate records. Such action goes beyond a claim of authority to make bookkeeping or accounting requirements, and touches actual property rights. In such circumstances, a utility should be able to learn from a declaratory judgment which commission has exclusive jurisdiction.

Allegations that the Federal commission would impose its original cost theory on the commission were regarded by the court as something more than prophecy. They were based upon the well-known fact that the Federal Power Commission is recognized as being an exponent of the original cost theory of establishing a rate base. If the company were required to await the decision of the Federal Power Commission, which inevitably would be contrary to that of the state commission, and then to decide for itself the important legal question as to which commission was its real master, it would be faced with the dangerous possibility of making an erroneous interpretation of the statute and, because of it, of suffering pains and penalties which follow a violation of the law.

Replying to an argument that Arkansas through its commission could intervene in a proceeding before the Federal commission and there exhaust its administrative remedy, and, if dissatisfied, appeal to a circuit court of appeals, the court said:

> Such a theory presumes that a sovereign state must appear before a Federal administrative body in order to have determined the legal effect of one of its own statutes considered in connection with a related Federal statute. This proposes a novel exten-

sion of Federal administrative power. Even if it be said that the Federal Power Commission has the right to exercise the judicial function of interpreting its own organic act, it could hardly be added that that agency also possesses the exclusive right to interpret a statute of one of the states of the Union, and to decide the relation between that state legislation and its own act.

Arkansas Power & Light Co. v. Federal Power Commission et al.

Government Differential Removed from Telegraph Schedule

In considering the petition of a telegraph company for approval of a new intrastate rate schedule and the elimination of certain classifications, the North Carolina commission carefully studied the findings of the Federal Communications Commission in regard to interstate rates. The Federal commission had allowed all of the proposed interstate rate increases and classification eliminations except the elimination of a differential on United States government business.

The state commission approved the petition in its entirety, going further than the Federal commission by approving the elimination of the government differential. The commission, in rejecting any government preference as discriminatory and imprudent from a practical standpoint, expressed the fear that once such differential had been allowed as to telegraph rates, preferential gas, electric, and telephone rates might be sought.

Going one step further, the commission wondered whether state governments might not seek similar preference so that the rates to other customers bearing the cost of these concessions would have to be again increased. *Re Western Union Telegraph Co. (Docket No. 3636).*

Order Excluding Water Right Values in Excess of Original Cost Vacated

An order of the New York commission directing the Rochester Gas & Electric Corporation to write off from its books acquisition costs of water rights in excess of "original cost" was vacated and annulled by the appellate division of the supreme court. [For commission decision, see (1943) 52 PUR(NS) 321.] The company had acquired the water rights in a consolidation. The commission had taken the position that a consolidation resulting in no change in the property owned could not be recognized as a valid reason for writing up the dollars of stated original cost on the books representing the property.

The company had set up on its books its actual cost in accordance with the accounting rules of the commission promulgated in 1908. The commission had conducted various examinations of accounts and records, financial statements were made and circulated, and securities sold with the commission's approval. In 1937 the commission promulgated a new Uniform System of Accounts requiring Electric Plant in Service to show only the "original cost."

Two judges agreed that the company's formation and original acquisition of properties were brought about in a lawful manner and that when the consolidation was effected the constituent companies were not affiliated, nor did they have any interlocking directorship or common ownership.

There was no evidence available that prior to consolidation either of the constituent companies had padded accounts or written up assets to inflate the capitalization of the new company. The mere fact that the company acquired this property as a result of the consolidation was not viewed as evidence, much less conclusive evidence, that fair bargaining did not take place or that values were not

properly measured in terms of price and legitimately capitalized.

A third judge, concurring in the result, believed that the consolidation should not be classified as a transaction entered into at arm's length, since promoters conceived the plan of consolidation and, generally speaking, the new corporation assumed obligations and gave to the former owners bonds of the consolidated company which were junior to those already outstanding issued by one of the constituent corporations. He agreed on the principle of recognizing the early entries, stating:

> For nearly forty years, since the creation of the public service commission, the books have not been attacked in other respects. There have been examinations and orders in other proceedings during that period. . . . The commission should give consideration to the value of the assets as compared with the book entries, and not destroy the surplus account because of a theory of bookkeeping, particularly where tacit approval has been given for more than a quarter of a century.

Two judges dissented, with the statement that a mere change in corporate entities through a consolidation should not increase the value of property devoted to a public use. *Rochester Gas & Electric Corp. v. Maltbie et al.*

Electric Co-op Serving One Nonmember Not a Public Utility

THE Arkansas Supreme Court set aside an order of the state public service commission holding the Arkansas-Louisiana Electric Coöperative to be a public utility subject to commission regulation. The coöperative corporation was organized in Louisiana and authorized by the Arkansas commission to serve an aluminum plant in Arkansas to be built by the Federal Defense Plant Corporation.

Domestic utility companies complained that the co-op was doing business in Arkansas as a public utility and, therefore, subject to commission regulation. The coöperative contended that the utility companies were unauthorized to complain to the commission and that the issue raised by the complaint was beyond the jurisdiction of the commission. It further contended that it was a coöperative, nonprofit, membership corporation exempt from commission regulation and that it served only the Defense Plant Corporation, one of its members. It contemplated service to rural coöperative members when materials became available.

Under Louisiana law the co-op could serve nonmembers in nonrural areas but Arkansas law prohibits such service. So, if the corporation, in entering Arkansas as a foreign corporation, brought with it all of its charter powers granted by the state of Louisiana, and if local law did not prevent the exercise of such powers in Arkansas, the commission's determination of the corporation's status as a public utility would be upheld.

But the court construed the Arkansas constitution to provide that a foreign corporation admitted to do business in the state was subject to the same regulations, limitations, and liabilities as like corporations of the state, and that the foreign corporation should exercise no greater powers than could be exercised by like domestic corporations. Since the foreign corporation was organized under the Louisiana Electric Coöpertative Act, which act was similar to the Arkansas Electric Coöperative Corporation Act, both of which acts were presumably passed pursuant to Federal Rural Electrification Act of 1936, the foreign corporation was a "like corporation" to an Arkansas coöperative created under the Arkansas act.

However, the court said, despite its restricted powers while operating in Arkansas, the Louisiana company could, nevertheless, become a public utility by reason of the activities it actually pursued in Arkansas. What a company does rather than what it, or the state, says that it is, determines its public utility status, the court ruled. The court declared:

The only service thus far performed by Ark-La in this state has been that rendered the Defense Plant Corporation under a certificate of convenience and necessity from the department. This service was rendered for a year, or more, prior to the time the Defense Plant Corporation became a member of Ark-La. Appellees insist that this service is inconsistent with the idea that Ark-La is operating in this state as a rural electric coöperative for the reason that a coöperative under our act may serve members only, as customers. Conceding, without deciding, that the question whether a corporation is acting *ultra vires* is one properly to be determined by the department, has the service rendered to the Defense Plant Corporation, under the circumstances disclosed in this record, resulted in fixing the status of Ark-La as that of a public utility? This service has been rendered pursuant to a private contract between the parties for the avowed purpose of relieving a power shortage created by the stress of war. It was rendered under a virtual directive of an agency of the Federal government clothed with broad wartime powers and acting in a period of grave national emergency. While the service was rendered to a public body, Ark-La was under no obligation other than that imposed by its agreement to furnish the Defense Plant Corporation with electrical energy, and did not thereby hold itself out as willing to serve the public generally. . . . In the case of *Re* Nevada Consolidated Copper Corp. (Ariz 1938) 25 PUR(NS) 319, the Arizona commission held that the copper company, furnishing power to the United States government temporarily to relieve a power shortage, was not doing a public utility business and was not, therefore, subject to regulation by the commission as a public utility.

We concur in this view, and conclude that Ark-La has not dedicated its property to the use of the public by its contract and service to the Defense Plant Corporation.

The fact that the Arkansas-Louisiana Electric Coöperative, Inc. (a sort of "holding company" or association of co-ops), was organized in Louisiana was held not to bar membership of Arkansas co-ops. *Arkansas-Louisiana Electric Coöperative, Inc., v. Arkansas Public Service Commission et al. 194 SW2d 673.*

Modification of Telephone Exchange Boundaries Precludes Restoration of Former Service

A COMPLAINT seeking to compel a telephone company to restore service discontinued at complainant's request was dismissed by the Missouri commission where, during the period of disconnection, a modification of the company's exchange boundaries placed the complainant in another company's exchange area.

When the former subscriber went into the armed service of the United States government, the service was discontinued at his farm voluntarily by his mother. Upon his return, he sold insurance and went to school under the GI Bill of Rights.

During the period of disconnection exchange boundaries were modified. This placed the complainant's home in the exchange area of the other company. It did not concern him as he was not then a customer of either company.

The companies, in changing the boundary line, agreed that patrons then being served would continue to be served by the same company until they discontinued service.

Such a subscriber would then cease to be considered as a patron or prospective patron of the company that had been serving him, and upon seeking service again, would be required to apply to the company in whose territory he was then located.

The complainant's insurance activities were in a city in the exchange area of the company which had formerly served him, and to be able to call prospective customers in such city, he would be required to pay a toll charge. His customers would not be able to contact him as easily if he were listed in the directory of the new company. His wife was a nurse working in the old company's exchange area, and for that reason the telephone at his house would more conveniently serve both him and his wife by enabling them to call directly rather than by toll.

In spite of these compelling factors, it was said:

The commission is sympathetic with the complainant in this case, in that he is attempting to reëstablish himself in a business way after leaving the service of the government, but it must also adhere to a policy established many years ago and followed consistently, in an effort to avoid duplication of facilities by utilities to furnish service to the public. . . . If the customers on the border line are allowed to demand service from either of the two companies, neither company will be able to plan facilities to adequately serve the public in such areas without unnecessary duplication, and if the facilities are so constructed, one or the other must necessarily stand idle while the patron is using the service of the other company.

Moser v. Southwestern Bell Telephone Co. (Case No. 10,744).

State Commission without Authority over Dam Construction on Navigable River

THE supreme court of Vermont reversed a state commission order granting a petition of a domestic electric corporation for authority to construct a dam on a navigable river. The petition had been submitted under a state statute. The court said that while none of the briefs filed in the case mentioned the Federal Power Act, it was bound to take judicial notice of all applicable provisions of that act.

It was conceded that the river involved was a navigable stream of the United States. The issue involved, therefore, was whether the state statute was applicable when considered in connection with the Federal Power Act, and also whether the state commission had jurisdiction over the subject matter of the petition. If not, the court said, the appeal brought nothing to it for review, and it was without jurisdiction to consider the merits of the case. In this connection it observed:

Although neither of the parties is raising the question of jurisdiction by motion, or otherwise, nevertheless, it has long been the law of this state that a court will dismiss a cause of any stage, whether moved by a party or not, when it is discovered that it has no jurisdiction; and also that jurisdiction over the subject matter of a suit cannot be conferred by agreement or consent of the parties when it is not given by law.

The court sought the answer to the question before it in the opinion of the United States Supreme Court in First Iowa Hydro-Electric Coöperative *v.* Federal Power Commission (1946) 66 S Ct 906, 63 PUR(NS) 193. Consideration of that case led to the conclusion that the state commission was without authority in law to entertain the petition and should have dismissed the same. Therefore, the court said, the attempted appeal presented no question on the merits of the case for its consideration. *Re Bellows Falls Hydro-Electric Corp. 47 A2d 409.*

Hauling for Another Does Not Create Multiple "Grandfather" Rights

AN action by a motor carrier to set aside an Interstate Commerce Commission order denying his application for a certificate under the "grandfather" clause was dismissed by the Federal District Court of West Virginia, which held that insufficient evidence of bona fide operation prior to the critical date had been presented.

Hauling by one motor carrier for another, the court ruled, does not create multiple "grandfather" rights as only the principal and not the agent may claim the benefit of such operation.

Upon discovery of untruthfulness in a witness' testimony, the commission properly may disregard his entire evidence, the court stated, after noting various discrepancies in the evidence presented to the commission in support of the application. *Evans v. United States et al. 65 F Supp 183.*

Other Important Rulings

THE department of transportation of Washington has ruled that it may not refuse to grant a permit to use the highways of the state, for interstate commerce, to a person who has received a certificate from the Interstate Commerce Commission and whose equipment and drivers measure up to the safety standards of the state and conform to its laws relative to equipment on the highways, on the ground that the person so seeking a permit has been violating state laws relative to operating without a permit. *Re Meyers (Order MV No. 44386, Hearing No. 3769).*

In considering a motor carrier's application to establish reduced rates, the Minnesota commission decided that the establishment of motor carrier rates based on distance without regard to the difference in weight or nature of property to be transported is not in the public interest. *Re West (Docket No. N-482).*

In considering objections of several radio stations to certain state taxes as a burden on interstate commerce, the Federal District Court for New Mexico decided that a radio broadcaster whose programs are heard by listeners both within and without the state is engaged in both intrastate and interstate commerce, but refused to determine whether the taxes constituted a burden on interstate commerce on the ground that a Federal court should not take jurisdiction where a plain, speedy, and efficient remedy is available in the state courts. *Whitmore v. Bureau of Revenue of New Mexico et al. 64 F Supp 911.*

A telephone company may not file a map and undertaking-to-serve statement for a company to which it furnishes switching service where the map and statement delineate an undertaking of service different from the undertaking admitted and contended for by the switched company, according to a recent ruling of the Wisconsin commission. *Re Wisconsin Teleph. Co. (2-U-2103).*

An Interstate Commerce Commission order requiring the divestment or cessation of the dual operations of a carrier, which order was based on a conclusion stated by the commission, without explanation, that imposition of forwarder billing limitations upon a common carrier certificate would not eliminate opportunities for discrimination between shippers, was termed improper by the Federal District Court for New Jersey, which ruled, in referring the matter back to the commission for appropriate action, that the commission has a duty to make basic findings to support its orders. *Fine & Jackson Trucking Corp. v. United States et al. 65 F Supp 443.*

The adequacy or inadequacy of existing rail service should not be determinative of the application of a motor carrier for a certificate, the Iowa commission ruled, in approving the application of a financially and otherwise able carrier for authority to operate a truck service which the commission believed would promote public convenience and necessity. *Re Ruan (Docket No. H-3698).*

The Pennsylvania commission asserted its power to waive its own rule as to the time limit for filing protest to an application for a certificate of convenience and necessity where the objectors' failure to file within the prescribed period was not due to their own neglect but to the excusable inadvertence of their attorney. *Re Rutledge (Application Docket No. 66399).*

No power resides in a state commission to limit the authority granted a contract carrier to a specifically named shipper, the Indiana commission ruled in awarding to a carrier a certificate free from such restriction. *Re Rogers Cartage Co. of Indiana, Inc. (No. 1563-B, 3).*

NOTE.—The cases above referred to, where decided by courts or regulatory commissions, will be published in full or abstracted in *Public Utilities Reports.*

PREPRINTS

OF CASES TO APPEAR IN

Public Utilities Reports

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VOLUME 64 PUR(NS) NUMBER 2

Points of Special Interest

Titles and Index

TITLES

INDEX

NEW YORK PUBLIC SERVICE COMMISSION

Re Intercompany Foreign Exchange Telephone Service

Case 12326
June 13, 1946

PROCEEDING *on motion of Commission as to rules, regulations, and practices of telephone corporations in furnishing intercompany foreign exchange telephone service; plan approved with understanding that mileage charges proposed are not approved, and proceeding closed.*

Service, § 445 — Telephones — Intercompany foreign exchange service.

1. A plan for intercompany foreign exchange service, under which the local company will own all lines within its franchise territory and will be responsible for making arrangements for service and will bill and be responsible for the collection of bills from customers, is not objectionable upon the ground that it would require independent companies to make additional investments of capital, in view of the obligation of any company to serve its franchise territory, p. 67.

Rates, § 584 — Telephone — Intercompany foreign exchange service.

2. Rates charged for intercompany foreign exchange service should substantially carry the service and should not be low enough so that this type of service is unduly encouraged, p. 70.

Service, § 294 — Ownership of telephone equipment — Intercompany foreign exchange service.

3. Each telephone company, under a plan for intercompany foreign exchange service, should own all the telephone works and system serving its franchise territory, as this avoids duplicate ownership of facilities and tends to preserve the integrity of the franchise, p. 70.

Service, § 445 — Telephone — Intercompany foreign exchange service.

4. A plan for intercompany foreign exchange service, based upon ownership of all lines by the local company within its franchise territory and responsibility of that company for service, billing, and collection of bills from customers, was approved without approval of suggested rates, p. 70.

Rates, § 584 — Telephone — Intercompany foreign exchange service — Tariffs.

5. Telephone companies desiring to follow a plan for intercompany foreign exchange service should submit appropriate tariffs in order that the Commission may consider their reasonableness, p. 71.

Rates, § 584 — Telephone — Intercompany foreign exchange service — Supplemental equipment and facilities.

6. Charges specified in the tariff of the normal company should apply to supplemental equipment and facilities, such as extension stations, bells, and

handsets under a plan for intercompany foreign exchange telephone service requiring such equipment and facilities to be provided by the normal company, although the monthly charge for local service of the serving company may properly be applied, p. 71.

(MALTBIE, Chairman, concurs in separate opinion.)

APPEARANCES: Philip Halpern, Counsel (by Richard C. Llope, Principal Attorney), for the Public Service Commission; John B. King, New York, General Attorney for New York Telephone Company; Edward S. Wood, Gloversville, Attorney for New York State Telephone Association; Fred S. Florance, Monroe, President, New York State Telephone Association, and General Manager of Highland Telephone Company; Don W. Walker, Albany, Executive Secretary, New York State Telephone Association; William A. Seely, Norwich, President, Chenango and Unadilla Telephone Corporation and Oswego County Independent Telephone Company; Clifford Sayer, Chatham, Manager, Chatham Telephone Corporation; L. H. Meyer, Johnstown, Vice President and General Manager, Upstate Telephone Corporation; C. R. Lloyd, Manlius, Treasurer, Lewis and Hall Telephone Company; R. Philip Hart, Cazenovia, Vice President and General Manager, Cazenovia Telephone Corporation; A. J. Bohnsack, Germantown, Owner, Germantown Telephone Company; Alexander Grasso (Mr. Buhrmaster of Counsel), Schenectady, Attorney for Mariaville and South Schenectady Telephone Company; Frank P. Tucker, Albany, President, Taconic Lake Association; C. F. Brandow, Schenectady; F. R. Foote, Schenectady; Walter Durniak, Germantown; W. W. Ingraham, Schenectady; Betty Lee Ingraham, Schenectady.

EDDY, Commissioner: This proceeding seeks to fix the conditions under which intercompany foreign exchange telephone service is to be furnished. Throughout the state there are cases where a subscriber living in the territory of one telephone company desiries local service from an exchange of another company. These reasons may be either business or social and are usually cases where the use of the telephone involves sufficient calls so that the charge for toll service exceeds the cost of securing service from the foreign exchange, including any subscriber contribution for line extension.

Foreign exchange service is, and for many years has been, available under existing tariffs where both the exchange where the subscriber is located and the exchange from which he desires service are owned by the same telephone company. The present proceeding is concerned with the extension of this type of service to situations where the two exchanges are owned by the different telephone companies.

A typical case was an antique dealer served by the Pattersonville Telephone Company, who testified it was his desire to be connected with the New York Telephone Company's Schenectady exchange. This desire was in part predicated upon the expectation of receiving better service, but chiefly because prospective customers, most of

whom would naturally come from Schenectady, would not pay a toll charge to call him, and who testified that advertising in Schenectady papers was of no benefit and he had lost considerable business because of the fact that possible purchasers could not call him on the local Schenectady exchange.

The exact number of people receiving foreign service in the state does not appear. The New York Telephone Company now has 356 such services in the state. One subscriber has twelve trunks so that the number of subscribers is actually less than that. There is no data as to the amount of foreign exchange service being rendered by the independent companies. At the present time foreign exchange service can be obtained only in the event that the foreign company obtains the permission of the local company to the extension of its lines. In some cases that is granted (one inducement to the local company being avoiding the cost of extending its lines). In many cases such permission has been refused because of the feeling of independent companies that the extension of the lines of another company into its territory leads to an entering wedge for the loss of future business.

[1] As a general consideration, it is desirable for any company to be limited to its franchise territory. There are, however, cases where exception should be made and the lack of foreign service is a serious business handicap to the subscriber. A committee of the State Telephone Association has prepared a plan designed to be uniform throughout the state for the furnishing of foreign exchange service. That plan has been agreed to by the New York Telephone Company. The gist of the plan is that the local company will own all lines within its franchise territory and will be responsible for making the arrangements for service and will bill and be responsible for the collection of the bills from the customers.

Upon the hearing one company, the Mariaville and South Schenectady Telephone Company, objected to the proposed plan upon the ground that it would require the independent companies to make additional investments of capital and advocated the furnishing of said service by agreement between the companies involved. With that objection I cannot agree. If a company has a franchise, it should be willing to serve its franchise territory. In fact, it is obligated to do so, and the present system tends to result in the granting of permission by the local company where it thinks the service would be a burden and denying the customer service in cases where it is profitable for the local company to do so. The net result of the proposal will be to confine the works and system of each company to its own franchise territory and will remove an existing source of friction and complaint far greater than the actual convenience of people involved, and will permit the giving of foreign exchange service under uniform conditions as a matter of right and not as a matter of favor and, frequently, discrimination as at the present time.

Mr. Florance, testifying for the telephone association, presented a proposed plan and gave the data on this on the following page to sustain the

proposed changes. The plan submitted by the telephone association provides:

1. The established monthly rates for service and equipment of the serving company for the class of service subscribed for.
2. Construction charges, if applicable, within the serving exchange in accordance with the established practices of the serving company. Construction charges covering the entire portion of the pole line extension required in the normal exchange.
3. The established mileage rates of the serving company for that portion of the line within the serving exchange. (Such mileage charges generally do not apply to rural line service.)
4. A mileage charge applicable to the portion of the line within the normal exchange in accordance with the following schedule, subject to a minimum charge for one-half mile.

	Monthly Rate for ½ Mile or Fraction Thereof
Individual line or PBX trunk	$1.00
2-party line, per station	.70
4-party line, per station	.35
Rural line, per station	.35

In support of the proposed mileage charges applicable within the normal exchange the witness for the telephone association submitted average costs of pole line and wire and related annual carrying charges. Such plant costs and carrying charges which, the witness testified, are those of the Highland Telephone Company in 1944 as representative of the average costs of the independent companies in the state, are as follows:

	Plant Costs	Per Mile
Pole Line		
20 25′ poles @	$15.74	$314.80
40 Pole brackets	.266	10.64
3 Anchor guys	8.43	25.29
3 Tree guys	4.53	13.59
Total Pole Line Costs		$364.32
Wire		
Iron wire per circuit mile		88.21
Copperweld wire per circuit mile		104.43
Copper wire per circuit mile		125.30

Annual Carrying Charge Rates

	Pole Lines		Wire	
	Contributed	Iron	Copperweld	Copper
Maintenance	6%	6%	6%	6%
Taxes	2%	2%	2%	2%
Depreciation	5%	5%	5%	3%
Administration	1%	1%	1%	1%
Return	—	6%	6%	6%
Total	14%	20%	20%	18%

Annual Carrying Charges

Pole line	$364.32 × 14%	$51.00
Iron wire	88.21 × 20%	17.65
Copperweld wire	104.43 × 20%	20.89
Copper wire	125.30 × 18%	22.55

Total Carrying Charges

	Annual Per Mile	Monthly Per Mile	Monthly Per ½ Mile
Pole line & iron wire	$68.64	$5.72	$1.43
Pole line & copperweld wire	71.89	5.99	1.50
Pole line & copper wire	73.55	6.13	1.53

Comment on the Plan

Included in each group of carrying charge percentages, except for contributed pole line, is a return at 6 per cent per annum. The application of 6 per cent to the cost new is equivalent to an average return of 12 per cent throughout the life of the property. A return of 3 per cent upon cost new would be equal to an average return of 6 per cent. Also there is a question as to the propriety of a depreciation charge (5 per cent) applied to contributed pole line (especially in view of the probability that the uniform system of accounts for telephone systems will be changed to agree with that for electric companies and contributed property will not be chargeable to plant accounts).

Adjusting the annual carrying charge of $68.64 per mile for pole line and iron wire to a return of 3 per cent on cost new reduces the carrying charge to $65. Further adjusting this annual carrying charge by the elimination of depreciation results in an annual charge of $46.02. The witness testified that in a large majority of cases iron wire is used. The proposed mileage charge of $1 per quarter mile per month produces annual revenue of $48 per mile as compared with the carrying charges outlined above.

The proposed mileage rates for 2-party line service is based upon an average line fill of one and one-half stations which at 70 cents per quarter-mile per month would produce annual revenue of $50.40; for 4-party and rural line service is based upon an average line fill of three stations (in the normal exchange) which at 35 cents per quarter-mile per month would produce annual revenue of $50.40 also.

The proposed rates will increase the cost of service an average of 68 cents per month for the 356 cases now receiving foreign exchange service from the New York Telephone Company. As this increase consists largely of the application of mileage charges within normal exchanges where no mileage charges now are in effect, most of the resulting additional revenue would accrue to the telephone companies operating the normal exchanges.

It was testified that the costs of line construction by the New York Telephone Company are higher than those of the independent telephone companies. However, such higher costs have but insignificant application as in practically all cases the normal exchanges are owned and operated by independent companies.

The proposed regulations provide that the minimum charge for intercompany foreign exchange service shall be the established rate for six months except that the minimum mileage charge for mileage within the normal exchange shall be the established rate for twelve months.

The proposed plan contemplates that each telephone company shall be responsible for the provision and maintenance of all facilities within their respective territories and that the normal company shall handle commercial, billing, and collection matters. The normal company is to retain 50 cents per month for furnishing and maintaining the station facilities, 15 per cent of the charges for toll messages, 10 per cent of the charges for telegrams, and the mileage charge appli-

cable to the portion of the line in the normal exchange. The balance is to be remitted to the serving company.

As the plan contemplates that the normal company shall own all facilities within its territory, there arises the problem of the transfer of such portions of lines as are now being used for this purpose. As previously stated, the evidence shows that there are now 356 cases of intercompany foreign exchange service in which the New York Telephone Company is the serving company. The Commission's records indicate that there is at least one other case where an independent company is the serving company. As in many instances more than one subscriber is served by the same line extension, the number of portions of line to be transferred would be less than the number of subscribers. To obviate a multitude of property transfer proceedings, each company which has such line extensions in other companies' territories could combine all of the proposed transfer into one petition for the consent of this Commission, thus reducing the number of proceedings to but a few. In many cases the lines were built by contributions and no financial problem will result.

There have been three proceedings before this Commission upon the complaint of applicants who were unable to obtain intercompany foreign exchange service. Case 10272 involved four applicants located in the territory served by the Ogden Telephone Company who desired service from the Rochester exchange of the Rochester Telephone Corporation; Case 10415 involved two applicants located in the territory served by the Champlain Valley Telephone Company who desired service from the Plattsburgh exchange of the New York Telephone Company, and Case 11343 which involved one applicant located in the territory served by the Germantown Telephone Company who desired service from the Hudson exchange of the New York Telephone Company. In addition, the Commission has eight pending informal complaints of the same nature.

Discussion

[2] Foreign exchange service is not a problem involving a great number of customers. There are, however, cases where it should be furnished. These are the exception and meet peculiar conditions of the customer involved. The rates charged for this type of service should substantially carry the service and should not be low enough so that this type of service is unduly encouraged.

[3] It is desirable that within its franchise territory each company own the telephone works and system serving that territory. This avoids duplicate ownership of facilities and tends to preserve the integrity of the franchise. The plan proposed herein accomplishes these results proposed upon the hearing.

The problem is not sufficiently universal with all companies as to presently require the adoption of the proposed or any other plan by all companies in the state.

[4] The plan proposed, with certain minor exceptions, is reasonable as a basis for appropriate arrangements by the companies desiring to adopt such a plan. However, it is apparent that the cost of service will vary from company to company and with the type of

installation used by the company. This is illustrated by the difference in cost between the use of iron and copper wire.

[5] This memorandum should not be considered as approving the proposed rates as reasonable. The companies desiring to follow this plan should submit appropriate tariffs and the reasonableness of the rates proposed can only be determined when such tariffs are filed.

Paragraph 1 of the plan provides: "The established monthly rates for service and equipment of the serving company for the class of service subscribed for."

[6] While it appears proper that the monthly charge for local service of the serving company be applied, it seems to me that the charges specified in the tariff of the normal company should apply to supplemental equipment and facilities, such as extension stations, bells, handsets, etc., as under the proposed plan such supplemental equipment and facilities are to be provided by the normal company. The plan, therefore, should be modified to provide that the charges for supplemental equipment and facilities furnished by the normal company should be the charges therefor specified in the tariff of the normal company and that the revenues derived from such supplemental equipment and facilities be retained by the normal company.

Recommendation

With the modification proposed any companies desiring to put the plan into effect should be permitted to do so, however, with the distinct understanding that the mileage charges proposed are not approved as proper charges but that the mileage charges provided in each tariff should be reasonable in considering the factor involved.

It is recommended that the proceeding be closed.

MALTBIE, Chairman: While agreeing with the memorandum and the proposed disposition of this proceeding, there are certain phases of the case which seem to need further emphasis, particularly in view of the fact that the Commission is not opposing the introduction of a character of service which is contrary to a general principle which it has recognized except under most unusual circumstances. That principle is (1) that when a utility receives a grant of authority to conduct a public service, there attaches to the grant the obligation to exercise such authority to the full extent and to surrender any authority not exercised, and (2) that where competition is undesirable, the overlapping of franchises or grants of authority should not be countenanced.

In the case before us, such principle would not be rigidly applied and in Commissioner Eddy's memorandum, it is clearly indicated that where a telephone subscriber desires to be connected to an exchange of a company which is not generally rendering service in the area where he is located, such service should be provided by the foreign company and not by the home company, provided of course that such service and the charges therefor are reasonable and proper. I understand the Commission is reserving, as in many other cases, the right to pass upon all features of any such arrangement, even to the extent of restricting or eliminating the service if and when

it is found that it develops to such an extent that it is not in the public interest.

At present the number of instances where it is desired is very small, but the independent telephone companies in the state with a few exceptions are small companies and have not been in favor of permitting another company to render service in their franchise areas. These independents, particularly the smaller companies, have rendered a valuable service in many localities. Possibly the service has not always been of the most complete character. For example, some have not provided telephone service twenty-four hours a day and their systems have not been of expensive construction; but it is doubtful whether in many localities where these companies operate a gilt-edge service would have been necessary or supported by the communities. Often they have been well satisfied with the service rendered, the cost of which has been less than that rendered by the Bell company. Being community enterprises they have served a very useful purpose. Having borne the heat and burden of the day, it would not be fair that the larger companies should be permitted to raid their territories, select the service to be rendered, and leave the small independent companies with a less productive field. Hence, it is my opinion that the extension of foreign companies into areas satisfactorily served by other companies should only be permitted when the need is clear, when the charge for service fully covers the cost of rendering the special service obtained, and the life of the home companies is not jeopardized.

In the instances called to our attention, there has been none where the subscriber wishing a foreign exchange connection has not been able to obtain telephone service through a connection with the exchange of the home company, for in all cases the home company has had a toll connection not only with the foreign company from which he desires direct service but through toll lines he has been able to reach practically every other telephone subscriber in the state of New York. Thus, we are not dealing with cases where no telephone service can be obtained but with those that desire a particular kind of telephone service.

While Commissioner Eddy does not recommend that the Commission adopt any plan for the provision of facilities and the various charges therefor, he adopts the general rule which seems to be sound that all of the facilities in the franchise area of the home company shall be provided by that company, that the foreign company shall provide all of the facilities in its franchise area, and that each shall receive a fair compensation for the facilities provided and the service rendered. In his memorandum, he naturally discusses the plan which was proposed and the charges submitted for the Highland Telephone Company. It should be clearly understood that the Commission does not at this time rule that those charges are just and reasonable even in the case where the Highland Telephone Company renders service to a subscriber in foreign territory. And the Commission does not now hold that a reasonable basis of charge by the Highland Telephone Company is necessarily a reasonable basis of charge for every company

throughout the state. The Highland Telephone Company charges are obviously open to serious criticism as pointed out and could not be fairly applied without considerable revision to say the least. Whatever charges are established by any company which adopts a system permitting a subscriber in the area of one company to have a direct connection with the exchange of a company in another area, it must be prepared to justify such charges, which means that the charges made and the rules and regulations established must be the result of a thorough analysis of the cost of rendering the service and not haphazardly adopted or copied from some other company without establishing that the conditions are exactly similar.

In the establishment of charges, a few principles should be recognized. In the first place, as this is an unusual and abnormal kind of service, the subscriber should pay the full cost so that in no case shall other subscribers of either the home or the foreign company be burdened or required to bear any loss due to the inadequacy of the rates. When I speak of the cost of service, I mean to include all elements of cost—operating expenses, taxes, depreciation, and return.

Secondly, it should not be forgotten that the rendering of this service will probably impose more than *average* costs. For example, a telephone company in determining the rates for service in its own territory may use certain average costs and each subscriber is not required to pay rates which exactly cover his cost of service. Obviously, the individual line subscriber near an exchange does not require the same amount of property as one located a considerable distance from the exchange but yet not so far away as to require a line mileage charge; and it is considered justifiable within certain limitations to use average costs and to fix rates on an average basis. But the class of subscribers here being dealt with will all be located beyond the boundaries of the areas of the companies actually rendering the service and the length of line to supply them will generally be in excess of the average length of line of the same class of subscribers in the supplying company's area. Such being the case, it would not be fair for the serving company to establish rates for this special service at the same rates it charges its own subscribers who on the average are well within its own territory.

Another instance will illustrate the factors to be considered. The subscriber may not wish to continue his connection to a foreign exchange. In such case, the facilities in the home company's area are likely to be rendered useless, for it will be seldom that another subscriber in his immediate vicinity will wish foreign exchange service. The possibility of utilizing the facilities provided for such a subscriber after he surrenders service will be less than in the case of a subscriber who uses normal telephone service, that is, has a connection with his home exchange.

To all of these points and others that might be mentioned, it may be urged that the number of instances where foreign exchange service will be desired is small and that the loss, if there is one, will not appreciably affect the home company. As already stated, rates cannot be fixed practicably on such a basis as to make each

subscriber pay exactly the cost of serving him, but in the case here being considered where an abnormal and unusual service is desired and where in all probability the larger and stronger companies will be the ones to render the service, it seems desirable that unusual care should be taken to see that the home company particularly receives an amount sufficient to cover all elements of cost and not in any case be called upon to stand a loss.

UNITED STATES CIRCUIT COURT OF APPEALS, FIFTH CIRCUIT

Arkansas Natural Gas Corporation

v.

Securities and Exchange Commission

No. 11052
154 F2d 597
March 22, 1946

PETITION *for review of order of Securities and Exchange Commission requiring divestment of subsidiaries engaged mainly in the oil business; petition to modify or set aside order denied. For Commission decision, see (1944) 53 PUR(NS) 272.*

Intercorporate relations, § 19.6 — Holding company simplification — Integrated gas system — Gas wells and pipe lines.

1. Gas wells and pipe lines are not necessarily a part of an integrated gas public utility system under § 2(a)(29)(B) of the Holding Company Act, 15 USCA § 79b(a)(29)(B), although properly retainable as other businesses reasonably incidental or economically appropriate to the operations of the system in the words of § 11(b)(1), 15 USCA § 79k(b)(1), p. 75.

Intercorporate relations, § 19.6 — Holding company simplification — Retention of oil business — Gas system.

2. An oil business which, after production and refining, is scattered over several states and has at no time any connection with the distribution of natural gas at retail which constitutes the business of a gas public utility under the Holding Company Act, is properly excluded from the integrated gas system under the provisions of § 11(b)(1) of the act, 15 USCA § 79k(b)(1), p. 76.

APPEARANCES: Henry C. Walker, Jr., of Shreveport, and John O. Wicks, of Pittsburgh, for petitioner; Roger S. Foster, Solicitor, Securities and Exchange Commission, of Philadelphia, for respondent.

Before Sibley, Holmes, and McCord, Circuit Judges.

SIBLEY, CJ.: Under § 11 of the Public Utility Holding Company Act of 1935, 15 USCA § 79k, the Securities and Exchange Commission required simplification of the vast public utility holdings of Cities Service Company, among other things, divesting itself of Arkansas Natural Gas Corporation, also a large holding company; and in turn, ordered the Arkansas Natural Gas Corporation to divest itself of its subsidiary companies engaged mainly in producing, distributing, and selling petroleum and its refined products, retaining only its full ownership of its main subsidiary, Arkansas Louisiana Gas Company, with all the latter's businesses as an integrated gas public utility system. The principal business of Arkansas Louisiana Gas Company is the distribution at retail of natural gas for heat, light, and power through 103 distribution plants in east Texas, north Louisiana, and Arkansas. This makes it a "gas utility company" under § 2(a) (4) of the act, 15 USCA § 79b(a) (4), but it also owns gas leases and wells and produces, gathers, and transmits gas, and sells some at wholesale. The gas production and transmission facilities and business were allowed to be retained as part of the integrated gas utility system, but the businesses of the holding company's other subsidiaries which produced petroleum in the same territory refined it there and transmitted and sold the products throughout the states of Texas, Arkansas, Louisiana, Kentucky, Tennessee, Alabama, Georgia, Virginia, North Carolina, South Carolina, and Florida, the Commission refused to include in the integrated gas utility system and ordered the holding company, Arkansas Natural Gas Corporation, to divest itself of these.

The Arkansas Natural Gas Corporation petitions this court to correct the order in two respects only: First, because the Commission declined to say whether it allowed the gas producing and transmission facilities of Arkansas Louisiana Gas Company to be retained in the system because they are a part of the integrated system, or as "other businesses" permitted by § 11 to be specially retained. Second, because the oil businesses of the other subsidiaries are not also allowed retained.

[1] 1. As to the gas production and transmission facilities and businesses, since they were retained, it would not be material to petitioner on what ground if they alone were involved. It is because the oil production business is carried on in the same territory and under the same general management, and to some extent by the same crews, it is thought the economies and convenience of the operations would better justify the retention of the oil businesses also if gas production is truly a part and not a mere adjunct of the gas utility system. We do not think the result contended for would follow. Oil production, transmission and distribution is not a public utility business under the act. No part of it has any place of right in the integrated systems set up under the act. There are but two kinds of such systems, § 2(a) (29). One relates to electricity and may consist of one or more generating plants, transmission lines and distribution utility companies, electric utility companies being themselves defined, § 2(a)(3), as those owning or operating facilities

for generation, transmission or distribution of electric energy for sale. By contrast, § 2(a)(4) defines a gas utility company as one that owns or operates facilities for the distribution at retail of natural gas, saying nothing about its production and transmission from the wells; and § 2(a)(29)(B), which treats of an integrated gas public utility system, mentions as composing it one or more gas utility companies, but again does not refer to their producing or transporting their supply of gas. We think the gas wells and pipe lines are not necessarily a part of this integrated system, though very clearly they were proper to be retained as other businesses "reasonably incidental, or economically . . . appropriate to the operations of [the] system," in the words of § 11(b)(1).

[2] 2. The Commission recognized that there were economies in the joint operation of the gas wells and oil wells of the subsidiaries, beginning at exploration and drilling in the same territory, and continuing through some of the managerial expenses. But the contact between oil and gas were mainly in production operations. The businesses were thereafter diverse. The gas business was done in a compact territory in Arkansas and a part of Texas and Louisiana, and conducted from the main office in Shreveport, Louisiana. The oil business, after production and refining, was scattered over eleven large states, and had at no time any connection with the distribution of natural gas at retail, which constitutes the business of a gas public utility under this act. The Commission was justified in excluding the oil business from the integrated gas system, under the provisions of § 11(b)(1).

That section puts the duty on the Commission to require petitioner, as a holding company registered under the act, to limit its operations to "a single integrated public utility system, and to such other businesses as are reasonably incidental, or economically necessary or appropriate to the operations of such integrated public utility system." The next words require that the holding company shall be permitted to continue to control additional public utility systems under certain conditions, which we need not consider since only one system is here involved. The statute then recurs to the subject of "other businesses" in these words: "The Commission may permit as reasonably incidental, or economically necessary or appropriate to the operations of one or more integrated public utility systems the retention of an interest in any business (other than the business of a public utility company as such) which the Commission shall find necessary or appropriate in the public interest or for the protection of investors or consumers and not detrimental to the proper functioning of such system or systems." This sentence is not a redefining of the "other businesses" previously mentioned as retainable, but is an enlargement, an addition thereto. In the first mention the operations of the utility system are in the foreground, and what is merely incidental to them, or what is economically necessary or appropriate to them may be retained. In the second mention of other businesses the public interests, and the protection of investors and consumers are in the foreground, and

retentions necessary and appropriate to protect these are permissible additionally, if not detrimental to the proper functioning of the system. No case is made here of the public interest or the protection of investors and consumers making necessary the retention of these oil businesses. The Commission we think correctly held they were not reasonably incidental to the gas public utility system, or economically necessary or appropriate to its operations. There was neither unlawfulness nor abuse of discretion in requiring the holding company to divest itself of them.

3. The decisions in North American Co. v. Securities and Exchange Commission (1943) 47 PUR(NS) 6, 133 F2d 148 and in Engineers Pub. Service Co. v. Securities and Exchange Commission (1943) 78 US App DC 199, 51 PUR(NS) 65, 138 F2d 936, have been urged upon us. Certiorari has been granted in both by the supreme court, so that neither stands as a precedent. We have though best simply to decide this case upon the portions of the act applicable to it, giving them the meaning which we think the words in their context naturally carry. It would serve no purpose to do more, seeing that broader questions about the act are now pending before the highest court.

The petition to modify or set aside the order of the Commission is denied.

SECURITIES AND EXCHANGE COMMISSION

Re North American Company et al.

File Nos. 59-10, 59-39, 54-50, 54-82, Release No. 6692
June 11, 1946

MOTION *by holding company for separate hearing on integration issue before further proceedings are held with respect to liquidation of subholding company or recapitalization of indirect subsidiary operating company, and motion for postponement of pending proceeding relating to such liquidation and recapitalization; motions denied.*

Intercorporate relations, § 19.8 — Separate hearing on integration issue — Absence of definite proposed transaction.

1. A determination of whether certain properties constitute an integrated public utility system may not be made in the absence of a proceeding to apply the standards of § 11(b)(1) of the Holding Company Act, 15 USCA § 79k(b)(1), to a specific existing system or proposed transaction which is sought to be tested by the integration standard, p. 80.

Intercorporate relations, § 19.8 — Holding company simplification — Chronology of procedure.

2. The order in which various matters relating to the simplification of a

holding company system are taken up in hearings before the Commission is peculiarly a matter for the Commission's discretion, and a party urging modification of that procedure must make a showing that its interests will be materially and adversely affected, p. 82.

Consolidation, merger, and sale, § 33 — Applicable holding company integration standard.

Statement that the integration standards of the Public Utility Holding Company Act, applicable to the acquisition of new properties, are different from those applicable to the retention of properties in a holding company system, p. 82.

APPEARANCES: Stoddard M. Stevens, Jr., of Sullivan & Cromwell, New York, for The North American Company; Sidney K. Schiff, of Pam, Hurd & Reichmann, and Mayer, Meyer, Sustrian & Platt, all of Chicago, for Illinois Power Company; Paul S. Davis, for the Public Utilities Division of the Commission.

By the COMMISSION: The North American Company ("North American"), a registered holding company, has moved for an order for a separate hearing upon and determination of the question whether the properties of Illinois Power Company ("Illinois") integrate with the properties of Union Electric Company of Missouri ("Union Electric") under the standards of § 2(a)(29) of the Public Utility Holding Company Act of 1935, 15 USCA § 79b(a)(29). North American has further moved that this integration question be decided by us *before* further proceedings are had with respect to the liquidation of North American Light & Power Company ("Light & Power") or the recapitalization of Illinois.

North American's interest in Illinois is held through Light & Power.[1] Union Electric is a direct subsidiary of North American. Union Electric and Illinois operate in adjoining areas. The former and a subsidiary operating in the state of Illinois serve St. Louis and East St. Louis, as well as certain adjoining territory and two small areas adjacent to their hydroelectric dams. Illinois operates entirely within the state of Illinois.

In our opinion of April 14, 1942, we considered the application of § 11 (2)(1) of the act to the North American system and, taking Union Electric as North American's "principal system," we ordered divestment of the bulk of North American's other holdings including its interest in Light & Power and Light & Power's subsidiaries.[2] In that opinion, however, we stated (11 SEC at p. 209,

[1] North American holds 84.72 per cent of the voting securities of Light & Power. Light & Power holds 26.02 per cent of the voting securities of Illinois and, in addition, holds warrants permitting the purchase of an additional 300,000 shares of Illinois common stock. North American also has a very small direct interest in Illinois. On October 23, 1945, we issued an order prohibiting Light & Power and North American from voting these shares of Illinois for the election of directors of Illinois on the ground that the Illinois management was entitled to prosecute appending claims case against Light & Power and North American without participation in board meetings of directors who were representatives of the holding companies. See Holding Company Act Release No. 6153, 61 PUR(NS) 69.

[2] 11 SEC 194, 43 PUR(NS) 257.

43 PUR(NS) at p. 272, footnote 19):

"The utility properties of subsidiaries of Light & Power are, of course, part of the North American system. North American has presented no evidence or argument directed to the question whether any of these utility properties can be retained under the act along with the Union system and since we cannot, on the basis of the record, find that such properties may be retained by North American as part of its principal system or as an additional system or systems meeting the (A), (B), (C) standards, we must order their divestment. However, our order requiring North American to divest itself of its interest in Light & Power and Light & Power's subsidiaries does not foreclose the filing of applications in the future looking to the possible integration of any of these properties with the retainable properties of North American."

On April 18, 1946, North American filed what is described as a comprehensive program for compliance with our April 14, 1942, divestment order.[3] This program is divided into plans A, B, and C. Plans A and B provide for the divestment by North American of various unretainable holdings, and have been set down for hearing on June 11, 1946. Plan C provides for the change of North American's name to Missouri-Illinois Company and the acquisition by the latter company of the publicly held common stock of Illinois through a forced exchange under which the Illinois common stockholders would be given common stock of Missouri-Illinois for their Illinois shares.[4] Illinois would be recapitalized under a plan involving retirement or conversion into common stock of the preferred, exercise by Light & Power of certain of its option warrants to purchase additional shares of Illinois common stock, and payment in cash of Illinois' preferred stock dividend arrearages and dividends arrears certificates. Light & Power would then be dissolved.[5]

Illinois' own plan of recapitalization was filed on April 11, 1946, and was set for hearing on June 5, 1946. Briefly summarized, this plan provides for the calling for redemption by Illinois of its preferred stock (each share of which is convertible into two shares of common) pursuant to an underwriting agreement whereby the underwriter will purchase sufficient shares of newly issued common stock to provide funds for the redemption of such preferred stock as is not tendered for conversion. Illinois also proposes to sell sufficient new preferred stock to obtain enough cash to pay its dividend arrearages and also to pay certain dividend arrears cer-

[3] An earlier liquidation plan of North American, dated August 4, 1943, was withdrawn by North American at the time of filing its new plan.

[4] Illinois filed a motion on May 27, 1946, to dismiss plan C. The city of St. Louis, Missouri, filed a petition on May 28, 1946, to intervene in opposition to plans A and C.

[5] Light & Power's dissolution was ordered by us on December 30, 1941. 10 SEC 924, 41 PUR(NS) 306. Light & Power filed a dissolution plan pursuant thereto on October 15, 1942, but consideration thereof has been delayed pending presentation of evidence on the intercompany claims asserted by Illinois against Light & Power and North American and the various claims-over and counterclaims. See Holding Company Act Release No. 4066, 47 PUR(NS) 235. The record in the latter proceedings was closed on April 22, 1946, and briefs are now being prepared.

tificates which have been outstanding since the company's 1937 recapitalization.[6]

The motion now before us was filed by North American on May 20, 1946. At the oral argument on the motion, counsel for both Illinois and our Public Utilities Division appeared in opposition.

In support of its motion North American contends that determination of the integration question is a prerequisite to any consideration of a liquidation plan for Light & Power, involving the disposition of more than 300,000 shares of Illinois common stock and stock purchase warrants covering an additional 300,000 shares, or consideration of a recapitalization plan for Illinois involving the issuance of "additional shares of common stock, with consequent shifts in relevant equity investment and voting power. This is particularly so since the character of Illinois Power denies the preëmptive right to the common stockholders." It urges that if there is integration the Light & Power liquidation plan should provide for the acquisition by North American of all of the Illinois securities held by Light & Power, including the stock purchase warrants, and that the recapitalization of Illinois should provide "for the building up by further investment" rather than "the tearing down by further public offerings" of North American's equity interest in Illinois.

North American further suggests that if the integration issue is first determined it will be possible to work out informally through discussions the remaining problems in the Light & Power dissolution and the Illinois recapitalization, and leave for formal hearing determination of the few remaining matters which cannot be so resolved. If, however, formal public hearings are held on the Light & Power liquidation or Illinois recapitalization without prior determination of the integration issue and without subsequent attempts by conference to narrow the areas of controversy, North American states that "it is to be anticipated that several more years will be taken up in hearings before the Commission and in litigation in the courts."

North American's motion may be considered in the light of its two component parts: (1) the application for a separate hearing upon and determination of the integration issue, and (2) the postponement of the Illinois recapitalization and the Light & Power liquidation proceedings pending determination of the integration question.

(1) *The Application for a Separate Determination of the Integration Issue*

Counsel for Illinois and counsel for the Public Utilities Division have vigorously asserted that North American's motion rests on invalid assumptions as to the policy of the Holding Company Act and have raised numerous substantive objections in response to North American's arguments. We do not, however, reach consideration of these objections. For, in our view, there is a basic difficulty which is met at the outset and which at this stage of the proceedings requires denial of the motion.

[1] Although § 2(a)(29) of the

[6] See Re Illinois Power & Light Corp. (1937) 2 SEC 266.

act defines "integrated public-utility system" in general terms, the determination of whether certain properties constitute such a system cannot be made in the absence of a proceeding to apply the standards of § 11(b)(1) to a specific existing system or proposed transaction which is sought to be tested by the integration standard. The question cannot be decided as an abstract theoretical problem. Yet that is what North American is asking us to do here. The company is in effect requesting us to make a general ruling on the abstract question whether two properties would integrate at a time when such a ruling cannot be related to a definite proposed transaction.

The very form of the motion itself demonstrates this. Except for a very small amount of stock which is held directly, North American's interest in Illinois is an indirect one based upon the holdings of its subsidiary, Light & Power. It is true that Light & Power has been ordered to dissolve, and that in such dissolution North American might acquire Light & Power's interest in Illinois. But such an acquisition would require an application by North American under § 10 of the act, and no such application has been filed.

Nor can the motion be considered as a request to modify our § 11(b)(1) order of April 14, 1942. For North American does not request modification of that order in so far as it requires divestment of North American's interest in Light & Power but rather it indicates a desire to retain its interest, which it now holds indirectly (and apparently also to acquire an additional interest) in Illinois. Since Light & Power must be divested, the retention by North American of any substantial interest in Illinois could be effected only by an application to transfer the indirect interest directly to North American and no such application has been made.

North American's motion might be viewed as directed to its plan C and the provision therein for acquisition by North American of the publicly held Illinois common stock. But the proper place to raise that issue is in the proceedings involving plan C. This motion does not request that plan C be set down for hearing; it refers to plan C only collaterally, and does not contend that determination of the integration question is a part of the proceedings involving plan C or any other application or declaration now on file with this Commission.

North American has not connected this motion with any pending proceeding at all, but in fact appears to be seeking a *separate* hearing upon and determination of the integration question apart from any pending matter. The company indeed goes further and argues that independent decision of this question is required before we can properly decide any of the other questions. In other words, North American is asking us for an abstract advisory opinion attended by a declaratory judgment that would conclusively decide the question whether Illinois and Union Electric integrate.

Whether we have power to grant such a declaratory judgment is at least open to doubt. But even if the question is one of discretion, we cannot resolve that discretion in favor of granting the pending motion. We do not rest our decision on adherence to the traditional common law reluc-

tance to issue declaratory opinions in the absence of a specific case or controversy. For here, in addition to the difficulty of making the requested decision in circumstances which do not permit definition of the precise issues except by conjectural hypotheses, there is the further factor that there may be a material difference in application of the integration standards of the act depending on the context in which the question ultimately arises as a matured controversy. It is clear that the integration standards applicable to the *acquisition* of new properties are different from those applicable to the *retention* of properties. See Re American Gas & E. Co. (1946) Holding Company Act Release No. 6639, 63 PUR(NS) 257. And it has been suggested that, even as to acquisitions, there may be different standards applicable depending on whether the acquisition is from a willing or an unwilling seller. Thus, until we are apprised of the context in which the question will be presented, we cannot be certain which standards are applicable. And it is only after the question is presented in relation to a specific application that we can properly consider and appraise the type of substantive objections raised by counsel for Illinois and counsel for the Public Utilities Division. For the reasons indicated, we will deny North American's motion for a separate hearing and determination on the integration question.

(2) *The Postponement of the Illinois Recapitalization and Light & Power Dissolution Proceedings*

[2] The order in which various matters are taken up in hearings before the Commission is peculiarly a matter for our discretion. Our procedure has been developed so as to promote an orderly and expeditious resolution of the issues presented in a series of complex proceedings. To justify a substantial modification of that procedure, the movant must make a showing that its interest will be materially and adversely affected. No such showing has been made here. The hearings on the Illinois application-declaration have already been once postponed because of the recent transportation difficulties, and it appears to us that permitting the hearings to proceed as now scheduled will not injuriously affect North American's rights.

In its position as an indirect Illinois stockholder and as Illinois' parent, North American will have full right to be heard on the Illinois recapitalization plan in accordance with Rule XVII of our Rules of Practice. North American may there present whatever objections it may have to the proposed recapitalization, may cross-examine proponent's witnesses and may participate fully in the filing of briefs and in any oral argument which may be ordered. North American has not demonstrated that it will suffer any undue hardship if the Illinois recapitalization hearings are allowed to proceed as scheduled. The real basis of the request for postponement appears to be North American's desire for a declaratory order on the integration question prior to *any* further proceedings in these matters and, as we have already indicated, we cannot issue any such order. We thus find no reason for altering the scheduled procedure which we believe most likely

to result in an orderly development of the issues raised in the various proceedings.

North American's motion also seeks postponement of further proceedings in the Light & Power dissolution. Light & Power's original liquidation plan has been held in abeyance while evidence was being taken in the claims case, and North American's Plan C, which involves the dissolution of Light & Power, has not yet been set down for hearing. And for reasons indicated above, North American has not shown adequate justification for altering prospectively whatever chronology may otherwise seem most appropriate in the future for achieving orderly and expeditious resolution of these proceedings.

We accordingly deny North American's motion for postponement of the Illinois recapitalization and Light & Power dissolution proceedings.

UNITED STATES CIRCUIT COURT OF APPEALS, SECOND CIRCUIT

Samuel Okin

v.

Securities and Exchange Commission

Nos. 209–211
154 F2d 27
March 4, 1946

REVIEW *of orders of Securities and Exchange Commission imposing conditions upon approval of refinancing of indebtedness by subsidiary to parent corporation; orders affirmed. See also (1944) 56 PUR(NS) 523, 143 F2d 945; (1944) 54 PUR(NS) 331.*

Intercorporate relations, § 6 — Jurisdiction of Securities and Exchange Commission — Subsidiary of holding company — Foreign operations.

1. A Maine corporation which is a subsidiary of a registered holding company is not exempt from regulation by the Securities and Exchange Commission by reason of the fact that it does not operate any public utility within the United States and its income from utility operations is derived solely from subsidiary companies operating in foreign countries, and the Commission has power to rule that such subsidiary is entitled to only partial exemption from regulation under the Holding Company Act, p. 86.

Security issues, § 120 — Conditions — Payment on debt to parent — Restriction when refinancing approved.

2. An order of the Securities and Exchange Commission authorizing a subsidiary to issue renewal notes for indebtedness to a parent corporation is not objectionable on the ground that a condition in the order providing for

possible future restrictions on payment of the notes is in effect an injunction against payment of the debt and therefore beyond Commission power, p. 87.

Security issues, § 15.1 — Powers of Securities and Exchange Commission — Imposing conditions.

3. The Securities and Exchange Commission has power, in permitting the refinancing of indebtedness owed by a subsidiary to a parent by issuing notes, to impose conditions that approval of the refinancing shall not affect the rank and status of the debt and other conditions designed to preserve the status quo pending a later determination of rank and status, p. 87.

Security issues, § 120 — Conditions to refinancing — Notes issued to parent company.

4. Orders of the Securities and Exchange Commission approving refinancing of indebtedness owned by a subsidiary to its parent do not conflict with § 26(c) of the Holding Company Act, 15 USCA § 79z(c) (preserving the validity of contracts), although the orders provide for postponement of the maturity of renewal notes until questions as to rank and status of the debt have been decided in another proceeding under § 11 of the Holding Company Act, 15 USCA § 79k, p. 88.

Corporations, § 22 — Reorganization — Validity of loan or renewal.

5. Section 26(c) of the Holding Company Act, 15 USCA § 79z(c) (preserving the validity of contracts), although saving the rights of a bona fide holders of securities, does not prevent invalidation of a loan or renewal held by one who had actual knowledge of the prohibitions of the Holding Company Act, p. 88.

APPEARANCES: Samuel Okin, of New York City, pro se, petitioner; Roger S. Foster, Solicitor, of Philadelphia, for the Commission, Simpson, Thacher & Bartlett, of New York city (John F. MacLane and Benjamin C. Milner, both of New York city, of counsel), for Electric Bond & Share Co.; Reid & Priest, of New York city (James L. Boone and Ralph M. McDermid, both of New York city, of counsel), for American & Foreign Power Co., Inc.

Before Swan, Augustus N. Hand, and Chase, Circuit Judges.

SWAN, CJ.: The basic order sought to be reviewed is that of January 22, 1944, 54 PUR(NS) 331. This order, entered upon the joint application of Electric Bond and Share Company and its subsidiary, American & Foreign Power Company, approved the refinancing of a large indebtedness owed by the subsidiary (hereafter called Foreign Power) to its parent (hereafter called Bond and Share). The debt arose out of a loan of $30,000,000 made by Bond and Share to Foreign Power in 1931 and a second loan of $5,000,000 made in 1932. In 1944 the debt was evidenced by a single note for $35,000,000 dated February 14, 1935, and bearing 7 per cent interest. This note became overdue in 1939 and interest was thereafter paid at 6 per cent. The joint application of debtor and creditor proposed that in satisfaction of the outstanding note the debtor made a cash payment of $5,000,000 and issue its 3 per cent serial notes aggregating $30,000,000

and maturing at successive yearly intervals. The order of January 22, 1944, *supra*, approved this proposal but upon conditions (imposed by the Commission on its own initiative) to the effect that such approval shall not affect the "rank and status" of the debt, and if final determination of such rank and status has not been made before any of the renewal notes matures, such note shall not be paid at maturity unless the Commission so orders, and the failure to pay it shall not increase the interest rate on the overdue note, nor accelerate the maturity of the other renewal notes.[1] The orders of April 25, 1945, and August 17, 1945, relate to extending, upon the same conditions, the maturity of renewal note No. 1 issued pursuant to the basic order of January 22, 1944, *supra*.

Okin's petition to review the basic order has already been before this court. A motion by the Commission to dismiss his petition on the grounds that he is not a person "aggrieved"[2] by the order and that his contentions as to error in the order were frivolous, was denied in (1944) 56 PUR(NS) 523, 143 F2d 945. Our decision was affirmed in American Power & Light Co. v. Securities and Exchange Commission (1945) 325 US 385, 392, 89 L ed 1683, 58 PUR(NS) 263, 65 S Ct 1254. Thereafter we denied a motion by Okin to require the Commission to file a complete record of the proceedings before the Commission in lieu of the abbreviated record filed by it. The case is here upon such abbreviated record, which is ample for presentation of the only contention now made by Okin, namely, that the Commission lacked power to impose conditions postponing payment of the renewal notes until the rank and status of the debt as against other creditors of Foreign Power should be determined.[3]

In support of his contention the pe-

[1] The order reads as follows:

"On the basis of said findings and opinion,

"It is ordered that said joint amended application and declarations relating to payment of $5,000,000 cash by, and issue of said serial notes by, Foreign Power to Bond and Share in cancellation and redemption of said $35,000,000 note be, and the same hereby are, respectively granted and permitted to become effective forthwith, subject, however, to the terms and conditions prescribed in Rule U–24, and subject to the further terms and conditions that:

"(1) The approval herein contained is subject to the express condition and reservation that the authorization by the Commission of the transactions herein proposed shall in no way serve to affect the rank or status, legal or equitable, of the debt claim of Bond and Share against Foreign Power heretofore represented by the note to be retired and hereafter to be represented by the notes to be issued by Foreign Power to Bond and Share hereunder, or the existing jurisdiction of the Commission with respect to said debt claim, in connection with any future reorganization of Foreign Power or any other matter in which said rank or status would be pertinent;

"(2) All agreements, conditions and reservations of jurisdiction heretofore imposed, made or entered into shall continue in effect and shall in no sense be demed to have been waived, terminated, or exercised by the action taken herein or hereunder; and

"(3) If final determination of such rank and status and the propriety of payment of such notes has not been made prior to the date of maturity of any one or more of said notes, no payment shall be made or received on or with respect to the principal of any of said notes at maturity or otherwise, except pursuant to permission of the Commission and until such permission is given, interest on said note proposed to be paid shall not be accrued, paid or charged at a rate in excess of 3 per cent per annum unless the Commission by order shall have permitted a higher rate of interest; and failure to make any such payment of principal prior to permission of the Commission to make such payment shall not serve to accelerate the maturity of any of said notes not otherwise matured by their terms."

[2] Okin is the owner of 9,000 shares of common stock of Bond and Share.

[3] We are told in the briefs that the question whether the debt claim should be subordinated to or subjected to some other equitable treat-

titioner makes the following points: (1) Foreign Power is not subject to regulation under the Public Utility Holding Company Act of 1935; (2) the orders under review are in effect injunctions against payment of the debt, and the Commission has no power to issue an injunction; (3) § 26(c), 15 USCA § 79z(c) precludes construing other provisions of the act to authorize the making of the orders under review. These points will be discussed seriatim.

[1] (1) Foreign Power is a Maine corporation, many of whose securities are held by American investors. It is a subsidiary of Bond and Share, which has registered as a holding company under the act. Foreign Power does not operate directly or indirectly any public utility within the United States, and its income from utility operations is derived solely from subsidiary companies operating in foreign countries. Because of these facts the petitioner argues that the Public Utility Holding Company Act of 1935 does not give the Commission jurisdiction to regulate any of Foreign Power's affairs.[4] We cannot agree with this contention. Foreign Power is within the literal definitions of "holding company" and "subsidiary company," set forth in §§ 2(a)(7) and 2(a)(8), 15 USCA § 79b(9)(7, 8) respectively, neither of which contains any geographical limitation. Under § 3(a)(5), 15 USCA § 79c(a)(5), the Commission is directed to exempt by rule or order a holding company from any provision or provisions of the act "unless and except in so far as it finds the exemption detrimental to the public interest or the interest of investors . . . if— . . . (5) such holding company is not, and derives no material part of its income, directly or indirectly, from any one or more subsidiary companies which are, a company or companies the principal business of which within the United States is that of a public-utility company."[5] A similar provision for the exemption of a subsidiary company of a holding company is found in § 3(b). The discretion which §§ 3(a)(5) and 3(b) confer upon the Commission to consider the public interest and the interest of investors in determining the extent of the exemption to be granted to a company such as Foreign Power would be meaningless, if the definitions of "holding company" and "subsidiary" were to be so limited as ipso facto to make the act inapplicable to such a company. Consequently, in our opinion, the Commission had power to rule, as it did in 6 SEC 396, that Foreign Power was entitled to only partial exemption from regulation under the act. We do not understand the petitioner to argue, nor could he successfully do so, that the partial exemption granted Foreign Power was broad enough to exempt it from the provisions upon which the Commission relied in making the orders now under review.

ment relative to the claims of the public security holders of Foreign Power, is now pending before the Commission in a consolidated proceeding involving a recapitalization and reorganization of Foreign Power, under § 11(e) of the act, 15 USCA § 79k.

[4] Foreign Power registered as a holding company on December 26, 1939, after the Commission had granted in part and denied in part its claim for exemption as a holding company, based on § 3(a)(5), and as a subsidiary, based on § 3(b). Re American & Foreign Power Co. (1939) 6 SEC 396. The petitioner did not participate in this proceeding and no appeal was taken from the order.

[5] The definition of "public utility company" is given in § 2(a)(5).

[2] (2) The petitioner's second point is grounded on the premise that the orders under review are in effect an injunction against payment of the debt, or any part thereof except the $5,000,000 payment authorized by the basic order, until the Commission shall have ruled upon its "rank and status." The argument is that the Commission has no power to make an injunctive order, but must apply under § 18(f), 15 USCA § 79r(f), to a Federal court to enjoin any acts or practices which will constitute a violation of the provisions of the act. Assuming the argument to be sound, the premise on which it is based is faulty. The basic order contains no injunctive provision; it authorizes the debtor to issue renewal notes on certain conditions.[6] Both debtor and creditor accepted these conditions and the notes were delivered in conformity therewith. Should the debtor make any payment in violation of the terms of the order, its action would not be in contempt of any injunctive provision of the order. Whether it could be proceeded against under § 29, 15 USCA § 79z–3, for a criminal offense is another question, but one which is irrelevant to the argument based on § 18 (f).

[3] (3) In support of its power to make the orders under review the Commission refers to numerous sections of the act, and particularly to 6 (a), 7(d) and (f), and 12(c) and(f) 15 USCA §§ 79f(a), 79g(d, f), 79l (c, f). Section 6(a) provides that, except in accordance with a declaration effective under § 7, no "registered holding company or subsidiary company thereof" shall "issue or sell any security of such company." The notes which Foreign Power proposed to issue in renewal of its debt to its parent were a "security" within the definition of § 2(a)(16). Under § 7(d) the Commission had to consider whether "the terms and conditions" of the proposed issue were "detrimental to the public interest or the interest of investors"; and under § 7(f) its order permitting the proposal to become effective could contain "such terms and conditions as the Commission finds necessary to assure compliance with the conditions specified in this section." Section 12(c) declares it unlawful for a subsidiary company of a registered holding company to "retire, or redeem any security of such company, in contravention of such rules and regulations or orders as the Commission deems necessary or appropriate to protect the financial integrity of companies in holding-company systems." Also apparently applicable are the provisions of § 12(f) which make it "unlawful for any registered holding company or subsidiary company thereof" to enter into or perform "any transaction not otherwise unlawful under this title, with any company in the same holding-company system . . . in contravention of such rules and regulations or orders . . . as the Commission deems necessary or appropriate in the public interest or for the protection of investors . . . or to prevent the circumvention of the provisions of this title or the rules and regulations thereunder." The foregoing sections are broad enough in terms to empower the Commission in its order approving issuance of the renewal notes to impose conditions designed to preserve the status quo pend-

[6] See note 1, *supra*.

ing a later determination of the rank and status of the debt claim of Bond and Share against its subsidiary; and the purpose of the act supports the same construction. Section 11 contemplates the simplification of holding company systems and the effectuation thereof by the submission of a plan "fair and equitable" to the persons affected by it. If the Commission lacked power to make orders such as those under review, its powers with respect to a fair and equitable plan under § 11 would be seriously circumscribed. Cf. Continental Illinois Nat. Bank & Trust Co. v. Chicago, R. I. & P. R. Co. (1935) 294 US 648, 678, 79 L ed 1110, 55 S Ct 595.

[4] The petitioner, however, contends that § 26(c) precludes the construction we have given to the sections above discussed. Section 26, 15 USCA § 79z, is entitled "Validity of contracts." Paragraph (a) deals with contracts to waive compliance with any provision of the act and declares them void; paragraph (b) deals with contracts made in violation of the act or the performance of which involves a violation, and declares them void but saves the rights of innocent assignees. Paragraph (c) reads as follows:

"Nothing in this title shall be construed (1) to affect the validity of any loan or extension of credit (or any extension or renewal thereof) made or of any lien created prior or subsequent to the enactment of this title, unless at the time of the making of such loan or extension of credit (or extension or renewal thereof) or the creating of such lien, the person making such loan or extension of credit (or extension or renewal thereof) or acquiring such lien shall have actual knowledge of facts by reason of which the making of such loan or extension of credit (or extension or renewal thereof) or the acquisition of such lien is a violation of the provisions of this title or any rule or regulation thereunder, or (2) to afford a defense to the collection of any debt or obligation or the enforcement of any lien by any person who shall have acquired such debt, obligation, or lien in good faith for value and without actual knowledge of the violation of any provision of this title or any rule or regulation thereunder affecting the legality of such debt, obligation, or lien."

The petitioner argues that this is a direct mandate that no provision of the act shall be construed (1) to affect the validity of any loan or renewal thereof, or (2) to afford a defense to the collection of any debt. As we shall show below this is not a correct interpretation of § 26(c). Even under the petitioner's interpretation we fail to see how the orders on review would conflict with § 26(c) for they do not pass upon the validity of the original loan nor subordinate its collection to the rights of other security holders of Foreign Power. They merely postpone maturity of the renewal notes until those questions shall have been decided in another proceeding. What that decision will be is as yet unknown.

[5] But the petitioner's interpretation completely disregards much of the language of paragraph (c). Thus, the clear implication of the "unless" clause is that other provisions of the act may be construed to affect the validity of the loan or renewal thereof, if at the time of making the loan or renewal the person making it shall have actual knowledge that the mak-

ing is a violation of the act or any rule or regulation thereunder. Similarly, other provisions of the act may afford a defense to a person who did not acquire the debt in good faith for value and without knowledge of the violation of the act. In short, we think § 26(c) saves the rights of bona fide holders; it forbids a construction which will invalidate a loan or renewal thereof in the hands of a bona fide holder but not when held by one who had actual knowledge of the prohibitions of the act, as, for example, that §§ 6 and 7 require the issuance of a renewal note to be authorized by the Commission. The petitioner cites no authority in support of his interpretation. Opposed to it is Re Community Gas & Power Co. Holding Company Act Release No. 4395, July 2, 1943; See also in Re American Gas & Power Co. (1944) 55 PUR(NS) 233, 55 F Supp 756, 759; Re Laclede Gas Light Co. (1944) 58 PUR(NS) 414, 57 F Supp 997, 1010, affirmed sub. nom. Massachusetts Mut. Life Ins. Co. v. Securities and Exchange Commission (1945) 61 PUR(NS) 308, 151 F2d 424; New York Trust Co. v. Securities and Exchange Commission (1942) 46 PUR(NS) 270, 131 F2d 274, certiorari denied (1943) 318 US 786, 87 L ed 1153, 63 S Ct 981. To give § 26(c) the meaning petitioner ascribes to it would nullify the regulatory and reorganization powers conferred by other sections of the statute already discussed. Such an interpretation must be rejected.

The orders under review are affirmed.

UNITED STATES DISTRICT COURT, N. D. OHIO, E. D.

Chester Bowles, Price Administrator

v.

Ohio Fuel Gas Company

Civil Actions Nos. 23431, 23432
65 F Supp 426
March 5, 1946

MOTIONS *for summary judgment in actions by Price Administrator, Office of Price Administration, against a gas utility company to enjoin collection of charges under increased ordinance rates and for order requiring restitution of overcharges; certain issues determined and final action deferred.*

Injunction, § 54 — Parties — Federal Price Administrator.

1. The Price Administrator has authority and capacity to bring suit to enjoin a public utility company from collecting charges under increased rates and for an order requiring restitution of overcharges, for failure to give

notice as required by the Emergency Price Control Act and the Stabilization Act, although these acts do not specifically authorize the Price Administrator to institute such an action, p. 92.

Rates, § 649 — Notice to Price Administrator — Effect of order transferring authority.

2. An executive order abolishing the Office of Economic Stabilization and transferring its authority and functions to the Office of War Mobilization and Reconversion, and providing that prior regulations and directives "relating to the Office of Economic Stabilization" should remain in effect, includes regulations issued by the Office of Economic Stabilization as well as those otherwise pertaining to it, and, therefore, a directive of the Office of Economic Stabilization designating the Price Administrator as the agency to receive notices of utility rate increases was not revoked, p. 92.

Rates, § 649 — Notice to Price Administrator — Intervention — Rates fixed by contract ordinance.

3. The Stabilization Act, and regulations issued thereunder, apply to rates fixed by a contract ordinance, and, therefore, a public utility is obligated to give the Price Administrator notice of a proposed increase in ordinance rates and to consent to his intervention, p. 93.

Rates, § 649 — Notice to Price Administrator — Contract ordinance — Automatic increases.

4. The Stabilization Act and regulations issued thereunder, requiring notice to the Price Administrator of any proposed increase in rates and consent to his intervention, do not require such notice and consent where automatic increases in rates become effective as provided in escalator clauses of contract ordinances passed in 1940, as the rates within the meaning of the statute and regulations were "in effect on September 15, 1942," p. 93.

Rates, § 649 — Notice to Price Administrator — General increase.

5. A rate increase in the bracket between 10,000 and 25,000 cubic feet per month is a "general increase" in rates and therefore requires notice to the Price Administrator under the Stabilization Act and regulations issued thereunder, with consent to intervention, since a "general increase" is an increase to a class of customers as distinguished from an increase to a particular customer under special arrangement, p. 94.

Rates, § 110 — Powers of municipalities — Effect of Stabilization Act.

6. The Stabilization Act, although requiring a public utility to give the Price Administrator notice of a proposed increase in rates and consent to intervention, does not limit the powers of municipalities in fixing rates, and they can approve rates authorized by ordinances even if the Price Administrator has disapproved them, p. 94.

Injunction, § 41 — Procedure — Rate increase without required notice.

7. The court should not enter final judgment or order restitution for overcharges because of the failure of a gas utility company to give notice to the Price Administrator and consent to intervention as required by the Stabilization Act until it is satisfied that the increase would not have been granted by the municipality if the administrator had intervened, p. 94.

APPEARANCES: A. D. Ruegsegger and Zellie Miner, both of Cleveland, for plaintiff; Luther Day and Arthur L. Dougan, of Jones, Day, Cockley &

Reavis, all of Cleveland, for defendant.

WILKIN, DJ.: These two cases are before the court on motions for summary judgment. The pleadings and affidavits filed in connection with the motions leave no dispute as to any material facts.

In the summer of 1940 the defendant agreed to supply natural gas to the city of Bucyrus, Ohio and the village of Crestline, Ohio at rates established in contract ordinances passed by the municipalities and accepted by the defendant pursuant to Art XVIII, §§ 4 and 5, of the Ohio Constitution. In July, 1943, the rates were increased in accordance wtih escalator clauses in the ordinances. A second increase would have occurred in July, 1944, when the second escalator clause was to become effective, but, for some reason not apparent from the record, new ordinances were passed by the municipalities and accepted by the defendant revoking the former agreements and establishing new rates. The rates established by the new ordinances were the same as those provided in the second escalator clauses of the former ordinances except that they were reduced ½ cent per hundred cubic feet in the 2,000–5,000 bracket and increased ½ cent in the 10,000–25,000 bracket.

The plaintiff instituted these actions for an injunction restraining the defendant from collecting any charges in excess of the rates in effect on September 15, 1942, and for an order requiring restitution of all overcharges to defendant's customers on ground that the increases were in violation of the Emergency Price Control Act of 1942, 50 USCA Appendix § 901 et seq., as amended by the Stabilization Act of 1942, 50 USCA Appendix § 961 et seq., in that defendant failed to notify the plaintiff of the proposed increases and consent to his intervention in the rate fixing proceedings. Defendant admits that no notice was given but denies that it was required to do so; it also contends that the plaintiff has no capacity to bring the suits and that the complaints fail to state any cause of action.

Under § 302(c) of the Emergency Price Control Act, public utility rates were excluded from price control. But § 1 of the Stabilization Act provides that:

"No common carrier or other public utility shall make any general increase in its rates or charges which were in effect on September 15, 1942, unless it first gives thirty days' notice to the President, or such agency as he may designate, and consents to the timely intervention by such agency before the Federal, state, or municipal authority having jurisdiction to consider such increase."

Section 7(b) of the Stabilization Act provides that:

"All provisions (including prohibitions and penalties) of the Emergency Price Control Act of 1942 which are applicable with respect to orders or regulations under such act shall, in so far as they are not inconsistent with the provisions of this act, be applicable in the same manner and for the same purposes with respect to regulations or orders issued by the Price Administrator in the exercise of any functions which may be delegated to him under authority of this act."

Executive Order 9250, Title VI

(4), 50 USCA Appendix § 901 note, designated the Economic Stabilization Director as the agency to receive notices of rate increases by public utilities (as provided in § 1 of the Stabilization Act) and authorized the director to carry out the powers granted to him "through such officials or agencies, and in such manner, as he may determine." (5) By Directive No. 1 (7 FR 8757) the Office of Economic Stabilization designated the Price Administrator as its representative to receive notices of rate increases and to intervene in any rate-making proceeding and granted him authority to issue regulations and to take such steps as were deemed appropriate for effectuating the policies of the Emergency Price Control Act as amended by the Stabilization Act. The Office of Price Administration then issued PR 11 (7 FR 9390) prescribing the form and manner of filing notices of proposed rate increases.

On September 20, 1945, Executive Order 9620, 50 USCA Appendix § 901 note (10 FR 12033), was issued abolishing the Office of Economic Stabilization and transferring its authority and functions to the Office of War Mobilization and Reconversion. All prior regulations, rulings, and other directives "relating to the Office of Economic Stabilization" which were not in conflict with the order were to remain in effect. The Director of War Mobilization and Reconversion then issued a directive (10 FR 12812) establishing the Office of Stabilization Administrator and delegating to him the functions and authority formerly vested in the Director of Economic Stabilization.

[1, 2] Although neither the Emergency Price Control Act nor the Stabilization Act specifically authorizes the Price Administrator to institute an action of this type, the broad powers of enforcement provided by the Emergency Price Control Act (which were made applicable to utility cases by § 7 (b) of the Stabilization Act), coupled with the delegation of authority to the Price Administrator by Office of Economic Stabilization Directive No. 1, gave the plaintiff authority and capacity to bring these suits. The defendant contends that the provision of Executive Order 9620 providing that "all prior regulations, rulings, and other directives relating to the Office of Economic Stabilization" should remain in effect did not include regulations, etc., "issued by" the Office of Economic Stabilization. Therefore, it contends, Directive No. 1, which designated the Price Administrator as the agency to receive notices of utility rate increases, was revoked by Executive Order 9620 because Directive No. 1 was not a directive "relating to" the Office of Economic Stabilization but was a directive "issued by" that office. Such an interpretation of Executive Order 9620 seems too restrictive. In its ordinary meaning, "regulations, rulings, and other directives relating to the Office of Economic Stabilization" would seem to include those issued by that agency as well as those otherwise pertaining to it, and there is no indication that the President did not use the phrase according to its ordinary meaning. Since the authority and functions of the office were transferred to another agency, it seems unreasonable to assume, in the absence of clear language to the contrary, that the President wished to re-

voke all the regulations, rulings, and directives which had been promulgated by the former agency.

[3, 4] The defendant next contends that the Stabilization Act and the regulations issued thereunder did not apply to rates fixed by a contract ordinance, as they were fixed in these cases, because there was no proceeding in which the Price Administrator could have intervened. The statute and regulations, however, clearly imposed a duty upon the defendant to give the Administrator thirty days notice of any proposed increase in rates and to consent to his intervention. The required notice and consent should have been given so that the Administrator could have taken whatever action was appropriate and feasible under the circumstances.

The increases which took place in July, 1943, were automatic increases which became effective precisely as provided in the escalator clauses of the contracts which were signed in 1940. Although they did not occur until July, 1943, the rates were "in effect on September 15, 1942." There are no Federal cases on this question, but the supreme court of Illinois has held that no notice need be given respecting rate increases which were established before the Stabilization Act was enacted, even though the higher rates were not collected until after the date of the act. Pullman Co. v. Commerce Commission (1945) 390 Ill 40, 59 PUR(NS) 355, 60 NE 2d 232; Fleming v. Commerce Commission (1944) 388 Ill 138, 56 PUR (NS) 477, 57 NE2d 384. In Henderson v. Washington, M. & A. Motor Lines (1942) 77 US App DC 26, 46 PUR(NS) 193, 132 F2d 729, it was held that carriers which had filed schedules with the Interstate Commerce Commission prior to the enactment of the Stabilization Act but had not put them into actual effect before September 15, 1942, must give the notice and consent to intervention required by the act, but the reasoning in that case is not applicable to automatic increases made pursuant to escalator clauses in contracts made prior to the act. After schedules have been filed with the Interstate Commerce Commission, there is a 30-day waiting period during which the Commission may hold hearings on the proposed rates, suspend operation of the new schedules for that purpose, and, after the hearings, it may fix different rates. The requirement of § 1 of the Stabilization Act of 1942, 50 USCA Appendix § 961, for notice and consent to intervention "before the Federal, state, or municipal authority having jurisdiction to consider such increase" could have no effect against the escalator increase of June 4, 1943, because there was no authority "having jurisdiction to consider such increase." It was automatic and therefore in legal effect. Notice would have served no purpose.

When, however, the council enacted in 1944 a new ordinance fixing rates to be charged to and collected from gas consumers it was acting as an authority having jurisdiction, and due regard for the purpose of the law required an interpretation giving effect to the provision for notice and consent to intervention. The Administrator should have been given a chance to be heard as the law evidently intended.

[5] As stated above, the contract ordinances adopted in 1944 increased the rates which would have become effective under the escalator clauses in one bracket, i. e., between 10,000 and 25,000 cubic feet per month. OPA PR 11, § 1300.901, defines a "general increase" in rates as an increase to a class of customers as distinguished from an increase to a particular customer or transportation service under special arrangement. This definition received judicial approval in Henderson v. Washington, M. & A. Motor Lines, *supra*. As thus defined, the increase in the 10,000-25,000 bracket was clearly a "general increase" in rates, and, therefore, notice and consent to intervention should have been given to the Price Administrator as required by the Stabilization Act and regulations issued thereunder.

[6] Although the Stabilization Act required the defendant to give the plaintiff notice of the proposed increase in rates and consent to his intervention, it did not limit the powers of the muncipalities in fixing rates, and they could have approved the rates authorized by the 1944 ordinances even if the plaintiff had disapproved of them. Interstate Commerce Commission v. Jersey City (1944) 322 US 503, 88 L ed 1420, 53 PUR (NS) 257, 64 S Ct 1129; Vinson v. Washington Gas Light Co. (1944) 321 US 489, 88 L ed 883, 52 PUR (NS) 257, 64 S Ct 731. In view of the fact that the rates were reduced in another bracket, it is quite possible that the municipalities might have granted the increase over the plaintiff's protest if he had intervened.

[7] Under the circumstances in these cases, the court is of opinion that it should not enter final judgment or order restitution until it is satisfied that the increase would not have been granted if the Price Administrator had intervened. The defendant should notify the councils of the two municipalities of the pendency of these cases and inform them that so far as it is concerned they are free to reconsider the rate-fixing ordinances adopted in 1944 and that it consents to the plaintiff's intervention with right to be heard by said councils. The defendant should give the plaintiff the required notice so that the plaintiff will have an opportunity to present to the councils his objections to any increases. The councils are, of course, free to take no further action or to reaffirm the action taken July 20, 1944, or to enact new rate-fixing ordinances to supersede those adopted in 1944. The court will retain jurisdiction of the two cases until such notices have been given and the councils have had a reasonable time to consider the matter. If the councils of the two municipalities take no action within a reasonable time after the above notices have been given, the cases will be dismissed. If the councils or either of them should establish new and different rates, the court will then reconsider the case and hear the parties before final decree or judgment is entered. Entry may be drawn by plaintiff in accordance with this opinion.

COLORADO PUBLIC UTILITIES COMMISSION

Re Kansas-Colorado Utilities, Incorporated

Application No. 7206, Decision No. 25799
April 11, 1946

APPLICATION *by gas utility for permission to extend service into contiguous territory; approved.*

Certificates of convenience and necessity, § 158 — Extension into contiguous territory — Commission approval as precautionary measure.

1. A gas utility, empowered by statute to extend its facilities into contiguous territory without first seeking Commission approval, may as a precautionary measure make application for specific Commission consent before making expenditures required to extend service, p. 96.

Certificates of convenience and necessity, § 104 — Approval of extension — Conditions required.

2. An application by a gas utility to extend service into contiguous territory will receive Commission approval where there are no objections to the extension, where the extension will not interfere with operations of any other utility, and where the inhabitants of the contiguous territory are desirous of obtaining the service, p. 97.

APPEARANCE: Harold Bolton, Abilene, for applicant.

By the COMMISSION: Heretofore, in Applications Nos. 1647, 1648, 1726, 1727, 1728, and 1729, The Central Gas Utilities Company, a corporation, was authorized to serve certain areas in Bent county, Colorado, and other sections in southeastern Colorado, as a gas utility, said operating rights being more particularly set forth in Decisions Nos. 9456 and 18746 (Application No. 5886), reference to which is hereby made.

Pursuant to authority contained in Decisions Nos. 22693, as supplemented by Decision No. 25016, Kansas-Colorado Utilities, Inc., acquired the certificates of public convenience and necessity and operating rights of The Central Gas Utilities Company, and ever since has served, and is now serving, in said territory, as a gas utility.

On November 6, 1945, Kansas-Colorado Utilities, Inc., filed its application with the Commission for authority to extend its natural gas service west of Wiley, Colorado, into Bent county, Colorado, and to serve all of township 48-West, Range 22-South, in said Bent county, including particularly the village of McClave, situated in said township.

It is alleged, and our records confirm said statement, that:

"No other natural gas utility is rendering service to the village of McClave or in any part of Township 48-

West, Range 22-South, Bent county Colorado, and that your applicant is in a position to render service therein more economically than other natural gas utility."

Since it also appeared from said application and from our files and records that the territory which applicant now proposes to serve under the extension sought to be made is contiguous to the towns and area which applicant, in the decisions aforementioned, was specifically authorized to serve, the Commission notified parties in interest of the pendency of said application, and that:

"Under § 35 of the Public Utilities Act, a public utility has the right to extend into contiguous territory without first obtaining a certificate of public convenience and necessity from this Commission. It appears from the application that the extension here involved is one which might have been made by the applicant without a certificate. However, inasmuch as the application has been made, we desire to dispose of this matter upon the files in this proceeding, without the necessity of holding a formal hearing.

"Therefore, if you have any objection, will you kindly file your written objections within the next ten days. If you do not have any objection to the granting of a certificate authorizing the extension asked for, will you kindly so indicate and also authorize the Commission to enter an order granting the certificate without the necessity of holding a formal hearing."

No objections have been filed to the entering of the order sought by petitioner.

Section 35(a) of the Public Utilities Act (Chap 110, Session Laws of 1917—§ 36, Chap. 137, 1935 C. S. A.), which, in part, provides:

"No public utility shall henceforth begin the construction of a new facility, plant, or system, or of any extension of its facility, plant, or system, without first having obtained from the Commission a certificate that the present or future public convenience and necessity require or will require such construction; provided, that this section shall not be construed *to require* any corporation to secure such certificate for an extension within any city and county or city or town within which it shall have heretofore lawfully commenced operations, or for an extension into territory, either within or without a city and county or city or town *contiguous* to its facility, or line, plant or system, and not theretofore served by a public utility of like character, or for an extension within or to territory already served by it, necessary in the ordinary course of its business; and, provided, further, that if any such public utility, in constructing or extending its line, plant, or system, shall interfere or be about to interfere with the operation of the line, plant, or system of any other public utility already constructed, the Commission, on complaint of the public utility claiming to be injuriously affected, may, after hearing, make such order prohibiting such construction or extension or prescribing such terms and conditions for the location of the lines, plants, or systems affected as to it may seem just and reasonable."

[1] While it is proper for applicant, if it so desires, in order to confirm its right to so do, to apply for a certificate of public convenience and ne-

cessity to extend its gas lines into the territories heretofore described contiguous to the towns and area it is authorized to serve under its certificates of public convenience and necessity, it seems to be clear that applicant, under the provisions of § 35(a), aforesaid, is not required to secure such certificate from the Commission before making such extensions. In other words, it had two courses open to it—it could apply for authority from the Commission to make the extension, or it could extend its lines into contiguous territory under the authority contained in the statute, taking the risk that such extension would not "interfere with the operation of the line, plant, or system of any other public utility already constructed." What applicant is here asking us to do, in effect, is to confirm its right to extend into such territories under and by virtue of the statute. There is no apparent reason why the Commission, in a proper case, should not confirm the right of applicant, under its certificates, to serve, or authorize it to serve, territories contiguous to towns which it specifically has been authorized to serve.

[2] It appearing that no one objects to the extension; that the proposed extension will not interfere with the operation of the line, plant, or system of any other public utility already constructed; that no other utility desires to, or is in a position to, economically serve the area which applicant seeks to serve under the proposed extension; that applicant is ready, able, and willing to serve; that the inhabitants of the village of McClave, Colorado, and the people residing in Township 48-West, Range 22-South, Bent county, Colorado, are desirous of obtaining natural gas service, and have requested applicant to furnish such service, the Commission is of the opinion, and finds, that applicant, under the provisions of § 35(a) of the Public Utilities Act (Chap. 110, Session Laws of 1917—§ 36, Chap. 137, 1935 C. S. A.), is authorized to extend its services to McClave, Colorado, and into the area and territory contiguous to the towns and areas now served by it; that public convenience and necessity require the construction and operation of said gas utility system in said town and territory described in the application; that said town and territory is not now served by any other public utility; that public convenience and necessity require, and will require, extensions, from time to time, of applicant's lines and service into areas within the boundaries of said territory, for the purpose of distributing and selling natural gas for light, power, and heating purposes, to and among present and future inhabitants thereof, as their needs may require; that applicant is fit, able, and willing to perform the service, and that certificate of public convenience and necessity should issue therefor.

ORDER

The Commission *orders:*

That Kansas-Colorado Utilities, Inc., under the provisions of § 35(a) of the Public Utilities Act (Chap 110, Session Laws of 1917— § 36, Chap 137, 1935 C. S. A.), is authorized to extend its gas lines and system into the areas and territories contiguous to the towns it heretofore has been authorized to serve under its

certificate of public convenience and necessity, and that its right to make such extension and to serve said town and extended territory under its certificate of public convenience and necessity set forth in the statement preceding, which, by reference, is made a part hereof, should be, and it hereby is, confirmed and approved.

That public convenience and necessity require, and will require, extensions, from time to time, of applicant's lines and service in said town and into the area within Township 48-West, Range 22-South, Bent county, Colorado, for the purpose of distributing and selling natural gas for light, power, and heating purposes, to and among present and future inhabitants thereof, as their needs may require, and this order shall be taken, deemed, and held to be a certificate of public convenience and necessity therefor.

Applicant shall file its rate schedules, rules, and regulations, set up its books and accounts in agreement with the Uniform Classification of Accounts, and bring all its practices as to testing, consumers' deposits and operations, records of meters, transformers, and complaints into compliance with the Commission's requirements, within twenty days from date.

Failure of applicant to comply as above ordered shall nullify and automatically revoke at the end of said period the authorization herein granted, subject to any further action or modification the Commission may order.

This order shall become effective twenty days from date.

INDIANA PUBLIC SERVICE COMMISSION

Re Panhandle Eastern Pipe Line Company

Cause No. 18282
April 22, 1946

PETITION *relating to issuance of debentures; authorization for issuance granted.*

Commissions, § 30 — Jurisdiction — Constitutionality of statute.

1. The Commission may not properly disregard statutes because they are claimed to be unconstitutional, but it is the Commission's duty to comply with the requirements of a statutory provision, p. 103.

Commissions, § 58 — Assessment for fees — Security issue of interstate company.

2. Fees provided for by § 96 of the Public Service Commission Act were assessed against a corporation in a proceeding to secure authority for issuance of securities, notwithstanding an objection that this would operate as an unconstitutional burden on interstate commerce and that the statute was invalid because of the interstate character of a large portion of the corporation's business and the lack of a provision in the statute for any allocation of the fees, p. 103.

By the COMMISSION: On April 17, 1946, Panhandle Eastern Pipe Line Company filed with the Commission its sworn petition, which was docketed as Cause No. 18282 of the Commission, and which, omitting the formal parts thereof, is as follows:

"Comes now Panhandle Eastern Pipe Line Company and without waiving or intending to waive any objection heretofore made by it in Cause No. 16741, 63 PUR(NS) 309, before this Commission to the jurisdiction of the Commission with reference to the petitioner's business of selling natural gas transported in interstate commerce directly to certain industrial consumers in the state of Indiana, respectfully shows to the Commission:

"1. That petitioner proposes to issue and sell through underwriters to the public $50,000,000 aggregate principal amount of its serial debentures maturing in equal annual installments of $2,000,000 on May 1, 1947, and on each May 1st, thereafter, to and including May 1, 1971.

"2. That such debentures are proposed to be issued and sold for the purpose of refunding $12,000,000 principal amount of its first mortgage and first lien bonds, series B, 3 per cent, due November 1, 1960, $8,250,000 principal amount of its first mortgage and first lien bonds, series C, 3 per cent, due January 1, 1962, $10,000,000 principal amount of its first mortgage and first lien bonds, series D, 2¾ per cent, due May 1, 1965 and $16,000,000 principal amount of its promissory notes due December 15, 1946–1955.

"3. That the net proceeds to Panhandle of the serial debentures proposed to be issued are estimated at between $49,750,000 and $50,250,000.

"4. That $47,312,812.50 of such proceeds will be required for the purpose of refunding all of such first mortgage and first lien bonds and such promissory notes (exclusive of accrued interest thereon) and the balance of such proceeds estimated at between $2,450,000 and $2,950,000 are to be added to the general funds of the company.

"5. That petitioner's Registration Statement with reference to said proposed issuance and sale was filed with the Securities and Exchange Commission under the Securities Act of 1933 on the 4th day of April, 1946, and is expected to become effective on or about the 24th day of April, 1946, and it is proposed that such sale be made immediately after the effective date thereof.

"6. That petitioner insists and has at all times insisted in Cause No. 16741, *supra*, before this Commission that it is engaged solely in interstate commerce in the state of Indiana, that as a consequence this Commission is not authorized by the statutes of Indiana to regulate any portion of petitioner's business and that regulation thereof by this Commission would unlawfully burden petitioner's interstate commerce in violation of Art I of § 8 (3) of the Constitution of the United States. That on November 21, 1945 this Commission made and entered an order in said Cause No. 16741 asserting regulatory jurisdiction over said business. That petitioner has brought an action in the Randolph Circuit Court of Randolph county, Indiana, (Cause No. 5440 therein) to have said order vacated and set aside, in which

petitioner contends that the order of November 21, 1945 unlawfully burdens its interstate commerce in violation of Art I of § 8(3) of the Constitution of the United States, which cause is now pending in said court and to this date has not been decided by said court.

"7. That in petitioner's negotiations with underwriters for the sale of such serial debentures, a question has been raised by counsel for the underwriters as to whether by its order entered on November 21, 1945, in said Cause No. 16741 this Commission has asserted or intends to assert jurisdiction under the Public Service Commission Act of Indiana of the issuance of such serial debentures by petitioner, and that the question so raised has seriously impeded and is seriously impeding the negotiations with said underwriters and the issuance and sale of said bonds. That said order of November 21, 1945, does not define or attempt to define the extent of regulatory jurisdiction asserted or intended to be asserted by this Commission over the business of petitioner, and in addition to contending that said order is invalid, as a burden on interstate commerce, petitioner believes and insists that even though regulatory jurisdiction of this Commission should be sustained by the courts as to certain phases of petitioner's industrial consumer business in Indiana on the ground that such phases are primarily of local interest and regulation thereof would not unlawfully burden petitioner's interstate commerce, such determination would not authorize regulation by this Commission which would directly burden such commerce; and petitioner further asserts that any regulation which would require petitioner to submit to this Commission for approval the matter of the issuance of securities covering its entire interstate pipe-line system running through the states of Texas, Oklahoma, Kansas, Missouri, Illinois, Indiana, Ohio, and Michigan, including its producing fields and facilities in other states, and pay the fees required therefor based on a rate calculated on the entire issue of said debentures would unreasonably burden such interstate commerce in any event.

"8. That petitioner cannot obtain a judicial determination of the applicability of § 54–504 Burns' Ind Stat Ann and related sections of the Indiana statutes to the proposed issuance and sale of said bonds in time to affect the proposed issuance and sale thereof, and is faced either with substantial loss in connection with the sale thereof on account of the uncertainty resulting from said order of November 21, 1945, or with being unable to proceed with such issuance and sale as at present contemplated by reason thereof and solely on account of the duress created by the commercial necessity of proceeding with said sale as proposed is compelled to seek relief from this Commission despite petitioner's denial of jurisdiction in the premises.

"9. The value of the property of petitioner in Indiana is a relatively small part of the value of its entire system and the value of its property used only for delivery to industrial consumers is only a negligible fraction of the value of its property in Indiana. No more than a small fraction of the obligations sought to be refunded arose out of or on account of any business of petitioner transacted in the state of Indiana,

but under § 54–511 Burns' Ann Stat (1933) this Commission is required to charge for permitting the issuance of securities by any public utility subject to its jurisdiction an amount equal to 25 cents for each hundred dollars of securities permitted to be issued without allocation or apportionment of any character on account of property in other states and such statute requires that the amount so charged shall be paid into the state treasury before any such securities shall be issued. That if your petitioner should be required to pay the fee provided by said statute, such fee would be in the amount of $125,000.

"10. Your petitioner has no desire to escape the payment of any fees to which the state of Indiana would be lawfully entitled by reason of the issuance of such debentures, but if compelled to pay such sum into the treasury of the state of Indiana could have no assurance that repayment could be obtained even after a judicial decision that this Commission had no jurisdiction to approve the issuance and sale of such securities without protracted, expensive, and uncertain litigation.

"11. That it would remove all impediments to the issuance and sale of such debentures if this Commission should:

"(a) Disclaim jurisdiction over such issuance and sale, which disclaimer could be without prejudice of any character to the determination of any questions of law or fact involved in this Commission's investigation in Cause No. 16741 or any proceedings relating thereto or any proceeding hereafter commenced with reference thereto and should be deemed irrelevant to any such proceedings, or

"(b) Approve the issuance and sale of debentures to the extent that it has jurisdiction so to do and issue its certificate of authority for the issuance and sale of said securities conditioned that such certificate shall be effective only on payment by petitioner of any and all fees which it is required by law to pay on account of such approval.

"12. If the Commission is unwilling at this time to disclaim jurisdiction of such issuance and sale, your petitioner believes that any rights of the Commission and the state of Indiana in the premises will be safeguarded if the Commission shall accept the second alternative of conditional approval by a certificate of authority to become effective on the payment of all fees required by law. Your petitioner is further willing further to secure the ultimate payment into the state treasury of any fees it shall be determined that it is required by law to pay by any arrangement pursuant to which the amount which it might ultimately be required to pay can be deposited in escrow with any Indianapolis banking institution designated by the Commission, to be so held until petitioner's liability therefor is finally adjudicated by a court of last resort, in which case any amount which your petitioner is held liable to pay shall be paid into the treasury of the state of Indiana and any remaining balance shall be repaid to the petitioner, or until the Commission and your petitioner shall jointly instruct such escrowee as to some other disposition thereof which joint direction shall be followed.

"13. That an emergency exists requiring the immediate consideration of this petition by reason of the fact

that on Monday, April 22, it will be necessary for your petitioner to enter into and execute an underwriting agreement if the proposed issuance and sale is to proceed at this time, and that at the time of entering into such underwriting agreement it will be essential to know the position of the Commission with reference to this petition and its action thereon. That if the Commission fails to consider and take action hereon prior to such date, it will become necessary to amend petitioner's registration statement before the Securities and Exchange Commission, thus delaying such issuance and sale for a period of time during which the present favorable market may be lost.

"14. By reason of said emergency, petitioner requests that the Commission consider this petition on investigation and without a hearing, and furnishes herewith for the assistance of the Commission copies of its registration statement filed with the Securities and Exchange Commission and of its applications heretofore made with Commissions in the states of Michigan, Kansas, and Ohio.

"15. Petitioner further requests that in said investigation the Commission consider all information with reference to petitioner and its business now in the files of this Commission.

"*Wherefore,* petitioner prays that the Commission in the alternative:

"(1) Issue its order disclaiming jurisdiction of such proposed issuance and sale of the serial debentures hereinabove described without prejudice to any right of regulatory jurisdiction of the business of petitioner heretofore, or which may hereafter be, asserted by this Commission in said Cause No. 16741 or any proceeding relating thereto, or otherwise; or

"(2) Issue its certificate of authority to petitioner for the issuance and sale of such debentures so conditioned as to become effective only upon the payment into the state treasury of all fees required by law to be paid by petitioner on account thereof."

The Commission has considered the allegations made by petitioner as to an emergency requiring the immediate action by the Commission on the subject matter thereof, and the request of petitioner for action on the petition without a hearing but upon an investigation to be made by the Commission. It is apparent that the time required for the publishing of notice, and the holding, of a hearing by the Commission would necessitate a postponement of the date proposed by petitioner for the sale of its securities. While this situation is one created by petitioner through its failure to present this matter to the Commission with dispatch, the Commission has concluded in this instance, in view of the unusual circumstances and the fact that the Commission has been able to satisfy itself by its investigation that the issuance of the securities proposed will not be detrimental to the public interest, to dispose of this matter without a public hearing to the end that no delay in the issue date of the securities will be required. Such action by the Commission is, however, not to be taken as a precedent for action by the Commission in security cases without public hearings thereon.

From its investigation of the subject matter of the petition, the Commission finds:

1. Petitioner is a Delaware corpo-

ration, and is engaged, among other things, in transporting natural gas through a gas transmission system extending from Texas to Michigan and in distributing such gas either to various companies for resale to residential, commercial, and industrial consumers or direct to industrial consumers in Indiana and elsewhere.

2. A substantial part of petitioner's property is located in Indiana, and a substantial part of the natural gas sold by petitioner is sold within the state of Indiana.

3. Petitioner distributes natural gas directly to industrial consumers in Indiana; is a public utility under the provisions of the Public Service Commission Act; is engaged in intrastate business within Indiana; and is subject to the jurisdiction of the Commission in the manner and to the extent provided by the laws of said state.

4. Petitioner presently has outstanding funded debt and stock as follows:

First Mortgage and First Lien Bonds	
Series B, 3%, due November 1, 1960	$12,000,000.00
Series C, 3%, due January 1, 1962	8,250,000.00
Series D, 2¾%, due May 1, 1965	10,000,000.00
Promissory notes, due annually, December 15, 1946 to December 15, 1955	16,000,000.00
4% Cumulative preferred stock, par value $100	14,000,000.00
Common stock, without par value, and surplus	36,566,728.10
Total	$96,816,728.18

5. The net income of petitioner for the years 1943, 1944, and 1945 has been $4,693,660.70, $6,204,523.19, and $7,676,005.20, respectively.

Petitioner proposes to issue and to sell at not less than 98½ per cent of face value, plus accrued interest, $50,000,000 principal amount of its serial debentures, bearing interest at a rate averaging not more than 2⅝ per cent per annum, maturing serially from 1947 to 1971, inclusive, at the rate of $2,000,000 principal amount each year; and to use the proceeds therefrom for the purpose of refunding all of its presently outstanding first mortgage and first lien bonds and promissory notes, to wit, $46,250,000 principal amount, and to provide funds for general proper corporate purposes, including 1946 construction work heretofore authorized by its board of directors in an amount approximating $9,000,000. Said serial debentures will be issued under an indenture, a copy of which in substantially final form has been filed with the Commission in this cause.

7. The issuance of the serial debentures as proposed and the retirement of all petitioner's presently existing funded debt is advantageous to petitioner and is in the public interest.

[1, 2] Counsel for petitioner have urged upon the Commission, among other matters, the view that even though approval of the securities by the Commission be required, the fees provided for by § 96 of the Public Service Commission Act cannot be assessed against it because of the admittedly interstate character of a large portion of petitioner's business and the lack of a provision in the statute for any allocation of the fee. Under such circumstances, they say, the section, as applied to petitioner, operates as an unconstitutional burden on interstate commerce and is invalid. While the Commission has been impressed with the argument presented, and the authorities considered by it, the issue is

not one on which decision is within the province of the Commission. Both courts and Commissions have uniformly recognized that an administrative agency may not properly disregard statutes because they are claimed to be unconstitutional. (Re Indiana General Service Co. [Ind 1919] PUR 1920A 948; Re Interstate Power Co. [Ind 1924] PUR 1925A 110; Re East Ohio Gas Co. [1939] 1 FPC 586, 28 PUR(NS) 129, 135; East Ohio Gas Co. v. Public Utilities Commission [1940] 137 Ohio St 225, 35 PUR(NS) 158, 166, 28 NE2d 599; Re Engineers Pub. Service Co. [1941] 9 SEC 764, 40 PUR(NS) 1, 5, 6; Panitz v. District of Columbia, [1940] 72 App DC 131, 112 F2d 39, 41, 42.) The Commission's duty is, therefore, to comply with the requirements of the statutory provision. In the light of pertinent decisions, petitioner should find no problem in preserving, either before or after the payment of the fee, its right to a determination of the fee question it is raising, and the Commission will fully coöperate in expediting the presentation of such issue before the courts, including the making of any such escrow agreement as may be joined in by the state treasurer and is approved by the attorney general.

It is therefore *ordered* by the Public Service Commission of Indiana that petitioner be, and it is hereby, authorized to issue and sell, at not less than 98½ per cent of the face value thereof, plus accrued interest from the date thereof to the date of sale $50,000,000 aggregate principal amount of its serial debentures, bearing interest at a rate averaging not more than 2⅝ per cent per annum, payable semiannually, and having terms and conditions as set forth in the said form of indenture submitted to the Commission by petitioner in this cause.

It is *further ordered* that petitioner be, and it is hereby, authorized to use the proceeds from the sale of said serial debentures for the purposes of (a) the redemption and retirement of all the first mortgage and first lien bonds and all the promissory notes of petitioner now outstanding in the principal amount of $46,250,000, and (b) to the extent not needed for the aforesaid purposes, for general proper corporate purposes, including payment of costs of the 1946 construction program.

It is *further ordered* that this order shall be and constitute a certificate of authority, authorizing petitioner to issue and dispose of said serial debentures of the character hereinabove described in the amounts, for the consideration, for the purposes, and upon the terms and conditions hereinbefore set forth and in accordance with the foregoing provisions of this order.

It is *further ordered* that within sixty days after the issue of said serial debentures, petitioner shall file with the Commission (a) a written report, signed by its president or one of its vice-presidents, and by its treasurer or one of its assistant treasurers, showing the principal amount of serial debentures issued, the date or dates of such issuance, the amounts or prices received therefor, the use made by petitioner of the proceeds of such issuance, and whether or not all the now outstanding first mortgage and first lien bonds and promissory notes of petitioner have been retired, and (b) at 6-month intervals thereafter, so

long as any of the moneys received by petitioner from the sale of said debentures shall not have been expended, either in the refunding of said outstanding first mortgage and first lien bonds and promissory notes or for capital expenditures, supplemental reports showing the portion of such amount that has been so expended and the nature of such expenditures, and the portion of such amount that has not yet been expended for such purposes.

It is *further ordered* that before petitioner shall issue any of the serial debentures, it shall pay into the treasury of the state of Indiana, the sum of $125,000, being the statutory fees for the authority and permission hereinbefore given with respect to the issuance of said serial debentures.

ILLINOIS COMMERCE COMMISSION

Re Central Illinois Electric & Gas Company

33576
May 21, 1946

APPLICATION *for order authorizing changes in type and heating value of gas, approving revised rate schedules, and authorizing abandonment of certain facilities for production of manufactured gas and recovery of portion of cost by amortization out of future earnings; granted under conditions prescribed by Commission.*

Accounting, § 14 — Extraordinary property loss — Substitution of natural gas — Amortization.

1. A loss on abandonment of manufactured gas facilities when natural gas is substituted is properly amortized over a period not exceeding ten years, when a gas utility reduces its rates in an amount calculated to absorb the net savings estimated to accrue to the company from substitution, p. 107.

Accounting, § 7.6 — Reserve for maintenance of gas benches — Natural gas substitution.

2. The balance in a reserve for maintenance of gas benches may be transferred to the reserve for depreciation of gas property when coke ovens are abandoned upon substitution of natural gas and the benches will not be refilled or relined and the reserve is no longer pertinent to the affairs of the company, provided, however, that the company should transfer the amount in the reserve to surplus, clearly marking the same as a cancellation of charges previously made to the account for maintenance of benches and retorts, and concurrently appropriating out of surplus an equivalent amount as an additional appropriation for depreciation on gas property, p. 109.

By the COMMISSION: On March 2, 1946, Central Illinois Electric and Gas Company (hereinafter sometimes called the petitioner) filed with the Illinois Commerce Commission its verified petition for an order authorizing changes in the type and heating value of gas distributed by the petitioner in the municipalities of Rockford, Freeport, and Pecatonica and certain adjoining territory in the state of Illinois, approving revised rate schedules, authorizing the abandonment of certain facilities for the production of manufactured gas, and authorizing the amortization of the loss resulting from such abandonment out of earnings over a period of years. Pursuant to due notice as required by law and by the rules and regulations of the Commission, hearings were held at the offices of the Commission in Chicago on March 13, 1946, March 27, 1946, and April 10, 1946. At the said hearings petitioner was represented by counsel and appearances were entered on behalf of the cities of Rockford and Freeport and said cities were also represented by counsel.

At the hearing of March 27, 1946, the city of Rockford filed its answer to the petition in which, among other things, the city prayed that this Commission make a full investigation of the basis for the rates proposed to be made effective for natural gas service in that city and other territory.

The situation disclosed by the said verified petition and by the evidence is substantially as follows:

1. Petitioner is an Illinois corporation with its principal office in the city of Rockford, in Winnebago county, Illinois; it is a public utility within the meaning of § 10 of Art I of "An act concerning public utilities," as amended, now in force in the state of Illinois; and it is engaged, among other things, in the business of manufacturing, distributing, and selling gas to the public in the cities of Rockford and Freeport, and the village of Pecatonica in the state of Illinois, and certain unincorporated ferritory adjacent to said municipalities, as well as to certain consumers adjacent to a gas transmission line owned by petitioner extending from Rockford to Freeport, Illinois; and the petitioner also furnishes natural gas in a portion of the city of Rockford, Illinois.

2. The manufactured gas now being distributed by petitioner in the areas above mentioned is produced in a coke oven and water gas plant of petitioner located at Rockford, Illinois, and in addition thereto petitioner owns a water gas plant at Freeport, Illinois, which is not in use.

3. Petitioner has advised the Commission that an order has been entered by the Federal Power Commission whereunder Natural Gas Pipeline Company of America has been authorized to furnish to petitioner a supply of natural gas adequate for all of the requirements of petitioner in the territory above mentioned, and petitioner proposes to purchase from said Natural Gas Pipeline Company of America, at the applicable scheduled rates approved by the Federal Power Commission, and to distribute and sell to the public in the areas above mentioned, natural gas having a heating value of approximately 1,000 British thermal units per cublic foot. Such changeover from manufactured

gas to straight natural gas will not require the acquisition or construction by petitioner of any gas transmission facilities since said Natural Gas Pipeline Company of America has already constructed a line of adequate capacity into the city of Rockford from which the petitioner is now purchasing natural gas for distribution in a portion of the city of Rockford as recited above.

4. Petitioner proposes, in the event that the changeover to natural gas is made, to file and make effective new rate schedules which will represent a substantial saving to customers in the areas affected as compared with the rates presently in force and effect, and also proposes to bear the expense of adjusting its customers' appliances to permit the use of natural gas throughout the said areas.

5. The cities of Rockford and Freeport and the village of Pecatonica have each duly adopted ordinances which set forth that it is in the interests of the people of said cities that natural gas service be established at the earliest practicable date. Said ordinances seek appropriate action to establish natural gas service by the petitioner, by the Illinois Commerce Commission and by the Federal Power Commission.

[1] 6. Petitioner has submitted to the Commission the accounting necessary to record the matters herein proposed and, in particular, requests the right to include what petitioner claims to be the loss-in-service value of property abandoned or otherwise retired from service which was not provided for by the depreciation or other reserves, and which could not be reasonably foreseen and provided for, in an account provided in the Uniform System of Accounts, said account being Account 141—Extraordinary Property Losses—(the tentatively determined amount it is proposed to include in this account being $372,360), to which end it requests the authorization or direction of the Commission. Petitioner has filed, in this proceeding, an application for permission to use the said account accompanied by the statement or statements giving a complete explanation of the nature and cause of the property loss, together with the description of the property, its location, the original cost thereof classified in accordance with the prescribed utility plant accounts, the cost to the utility, the amount of intangible value carried in the accounts with respect to such property (said amount being unknown to petitioner), the amount at which the property is retired or to be retired, the amount chargeable to the depreciation reserve (which amount, however, is subject to the salvage to be realized and the cost of removal as they shall be determined by the execution of the proposals herein), and a copy of the statement to be made to the trustee under its mortgage with respect to the property to be retired, and proposes to write off the loss over a period of ten years through Account 506—Abandoned Property Losses Chargeable to Operations. In this connection, petitioner has calculated that the property loss herein is chargeable in part to the year 1945 and in part to the year 1946 for income tax purposes, and that certain income tax savings will be realized. As a result, the savings as they shall be realized will be appropriated in full to reduce

the loss which occasioned the said savings. The Commission, in Cause No. 31744, had occasion to authorize certain accounting practices for petitioner in connection with its property accounting, all of which authorizations were subject to subsequent determination of the correct amounts as in the said order provided. The amounts involved in this matter and the factual background relating thereto are so intimately involved with the entire program of property accounting that it would be unwise, at this time, to approve or direct the recording of the specific amounts petitioner has requested. However, in so far as the abandonment of the manufacture of gas by the substitution of natural gas is concerned, an extraordinary property loss has been realized by petitioner; provided (1) that the amount stated by petitioner to be the original cost of the property to be retired is actually the original cost of the said property, and (2) that the amount imputed by petitioner to be the depreciation provided for the said property is not inconsistent with the depreciation that has been allowed by this Commission to petitioner over its past history, added to the amount appropriately included in petitioner's accounts at its organization or at such time as petitioner first came under the jurisdiction of this Commission, and (3) that the income tax savings appropriated by petitioner as above recited are as petitioner alleges. The Commission recognizes that such a loss on abandonment is properly to be amortized over a period not exceeding ten years, in view of the fact that petitioner has in this proceeding reduced its rates in an amount calculated to absorb the net savings presently estimated to accrue to petitioner from the substitution of natural gas for manufactured gas.

Petitioner shall therefore record in connection with the progress and consummation of the matters herein proposed its accounting as follows: Petitioner shall establish a work order for the retirement of the property herein involved and shall record on the said work order all of the transactions and other matters pertaining thereto. Petitioner shall remove from its plant accounts and charge against its Reserve for Depreciation the original cost of the gas production plants at Rockford and Freeport that are rendered unnecessary and no longer used and useful by the introduction of natural gas. Petitioner shall likewise charge to its Reserve for Depreciation the cost of removal and shall credit to its Reserve for Depreciation the salvage realized from the sale or other disposal of the property retired. Petitioner shall appropriate as additional depreciation, either through operating expenses or surplus, an amount equivalent to the tax savings realized as a result of the property loss sustained from the instant proposals and shall credit the same to its Reserve for Depreciation. In the event that the recording of the preceding entries shall result in a charge to the Reserve for Depreciation in an amount in excess of the amount of depreciation accrued in said reserve with respect to such property, petitioner shall transfer the amount of the said excess to Account 141—Extraordinary Property Losses—and shall amortize the said amount over a period not exceeding ten years. For the purpose of ar-

riving at the amount of depreciation accrued in said reserve, petitioner shall compute the amount that should have been recorded in its Reserve for Depreciation in accordance with previous orders, if any, of the Commission or in accordance with reasonable estimates of the life of the property involved, it being understood that the rates used for petitioner's computation of loss for income tax purposes are reasonable rates. The amounts recorded by petitioner with respect to the accounting as hereinbefore in this paragraph set forth shall be subject to a determination of the correct amounts based on the result of such review and investigation, or reviews and investigations, as the Commission may hereinafter institute with respect to compliance with General Orders 143 and 144 or such particular orders of investigation and review as the Commission may hereafter enter against petitioner, it being understood that the Commission will order a change in the said amounts only upon a hearing at which petitioner shall be represented by counsel and shall have the right to cross-examine the witnesses for the Commission and to present witnesses on its own behalf, but at which time petitioner will maintain the burden of proof that its amounts are correct and that the results of its accounting are the appropriate results under the Uniform System of Accounts as promulgated.

[2] Petitioner has provided a reserve for the maintenance of gas benches in the amount of $86,021 over a period of years. In view of the fact that petitioner will abandon the coke ovens pursuant to the provisions of this order, the benches will not be refilled or relined and the said reserve is no longer pertinent to the affairs of the petitioner. Petitioner proposes to transfer the balance in the reserve for maintenance of gas benches to the Reserve for Depreciation of its gas property and should be authorized so to do provided that petitioner shall transfer the amount in the said reserve for maintenance of gas benches as of the effective date of this order to its surplus, clearly marking the same as a cancellation of charges heretofore made to Account 726–1, Maintenance of Benches and Retorts, and shall concurrently appropriate out of its surplus an equivalent amount as an additional appropriation for depreciation on its gas property, which procedure does not require the authorization, consent, and approval of this Commission.

The Commission having considered the aforesaid petition and all of the evidence, both oral and documentary, and the statements of counsel, and being fully advised in the premises, is of the opinion and finds: (a) that the Commission has jurisdiction of the petitioner and of the subject-matter of said petition; (b) that petitioner is a corporation duly created, organized, and existing under and by virtue of the laws of the state of Illinois, and is engaged, among other things, in the business of manufacturing, distributing, and selling gas of approximately 565 British thermal units per cubic foot to the public in the cities of Rockford and Freeport and the village of Pecatonica in the state of Illinois and certain unincorporated territory adjacent to said municipalities, as well as to certain consumers adjacent to a gas transmission

line owned by petitioner and extending from Rockford to Freeport, Illinois, and petitioner also furnishes natural gas in a portion of the city of Rockford, Illinois, and petitioner is duly authorized by its charter to carry on the foregoing business; (c) that by virtue of an order entered by the Federal Power Commission and arrangements made by petitioner with Natural Gas Pipeline Company of America, petitioner will have available for distribution to the public in the areas above mentioned, in substitution for the manufactured gas now being distributed, an adequate supply of natural gas, and that petitioner proposes the distribution and sale to the public in the said areas of straight natural gas having a heating value of approximately 1,000 British thermal units per cubic foot; (d) that the schedules of rates for natural gas service which petitioner proposes to make effective in the respective communities and territories above specified and their environs will result in an average over-all saving to the present customers of petitioner of approximately 13.5 per cent and will not result in increasing the bills of any of the present customers; that the said schedules of rates have the effect of passing on to the customers substantially all of the net savings which will result from the change from manufactured to natural gas, and that by reason thereof the customers of the petitioner in said service area will enjoy an aggregate annual saving of approximately $234,500; (e) that the proposed change in heating value of gas by means of the said changeover will result in a material increase in the capacity of petitioner's storage, transmission, and distribution system and facilities by reason of the increased thermal content of the gas and the ability of the petitioner to render adequate gas service to the public will be greatly increased; (f) that in connection with the aforesaid changeover it will be necessary to make certain adjustments in consumers' gas burning appliances, and that petitioner should, at its own expense, as soon as it starts the distribution of straight natural gas in the aforesaid areas, proceed with reasonable dispatch to make or cause to be made the necessary or appropriate adjustments or changes in consumers' gas burning appliances, all to the end that the said appliances can with reasonable efficiency utilize natural gas having a heating value of approximately 1,000 British thermal units per cubic foot; (g) that petitioner should be authorized to discontinue the supplying of manufactured gas in the cities and other territory above specified and to substitute in lieu thereof straight natural gas having a heating value of approximately 1,000 British thermal units per cubic foot, and to file and make effective new schdeules of rates covering natural gas service which shall prescribe rates and charges as follows:

Rates applicable to Rockford and adjacent urban territory:

Rate 30—Domestic Service

	Per Therm
First 2 therms used per month @	23.5¢
Next 12 therms used per month @	20.5¢
Next 16 therms used per month @	13.0¢
All over 30 therms used per month @	7.0¢

Minimum charge, 50¢ per month

Rate 32—Commercial and Industrial Service

	Per Therm
First 2 therms used per month @	23.5¢
Next 48 therms used per month @	20.5¢
Next 100 therms used per month @	14.0¢

Next 850 therms used per month @ .. 10.0¢
All over 1,000 therms used per month @ 9.0¢
Minimum charge, 50¢ per month

Rate 33—Industrial Service

Per Therm
First 2,000 therms used per month @ 9.0¢
Next 28,000 therms used per month @ 6.6¢
All over 30,000 therms used per month @ 5.0¢
Minimum charge, $225 per month

Rate 35—Commercial space heating and air conditioning

Per Therm
First 2 therms used per month @ ... 23.5¢
Next 12 therms used per month @ .. 20.5¢
Next 16 therms used per month @ .. 13.0¢
All over 30 therms used per month @ 7.0¢
Minimum charge, $1 per month

Rate 36—Commercial Service—hotels, restaurants and bakeries

Per Therm
First 200 therms used per month @ .. 16¢
All over 200 therms used per month @ 8¢
Minimum charge, $40 per month

Rate BN—Domestic and small commercial service through prepayment meters (limited to present consumers at present location)

Per Therm
For all gas used ..... 24.272¢
Minimum charge, 50¢ per month

Rate HX—Space heating—mild weather—residential (limited to present consumers at present locations)

Per Therm
For all gas used ..... 8.8¢
Minimum charge, $15 per year

Rates applicable to Freeport, Pecatonica, and adjacent urban territory, also to rural consumers served directly from the Rockford-Freeport high pressure transmission line.

Rate FO—Domestic Service
First 3 therms or less used per month for 75¢

Per Therm
Next 8 therms used per month @ ... 23.5¢
Next 19 therms used per month @ .. 13.0¢
All over 30 therms used per month @ 7.0¢
Minimum charge, 75¢ per month

Rate F2—Commercial and Industrial Service
First 3 therms or less used per month for 75¢

Per Therm
Next 10 therms used per month @ .. 23.5¢
Next 387 therms used per month @ 14.4¢
Next 1,600 therms used per month @ 9.0¢
Next 28,000 therms used per month @ 6.6¢
All over 30,000 therms used per month @ 5.5¢
Minimum charge, 75¢ per month

Rate F5—Commercial space heating and air conditioning
First 3 therms or less used per month for 75¢

Per Therm
Next 8 therms used per month @ ... 23.5¢
Next 19 therms used per month @ .. 13.0¢
All over 30 therms used per month @ 7.0¢
Minimum charge, $1 per month

Rate F6—Commercial bakery service

Per Therms
First 200 therms used per month @ .. 16.6¢
All over 200 therms used per month @ 8.4¢
Minimum charge, $40 per month

Rate FB—Domestic and small commercial service through prepayment meters (limited to present consumers at present locations)

Per Therm
For all gas used ..... 24.272¢
Minimum charge, 75¢ per month

Rate FX—Space heating—mild weather—residential (limited to present consumers at present locations)

Per Therm
For all gas used ..... 10.1¢
Minimum charge, $15 per year.

which new schedules of rates, when filed, shall supersede and cancel petitioner's existing schedules for manufactured gas service and natural gas service in the said territories, provided that said new rates shall become effective with respect to the consumers in any district or area at the time of conversion of such district or area to natural gas, but with respect to consumers now being supplied with natural gas in what is known as District No. 1 in Rockford said new rates shall become effective on or about the date when the second district or District No. 2 in Rockford is first supplied with natural gas; (h) that the coke oven plant of petitioner located in Rockford, Illinois, and the water gas plant of petitioner located in Freeport, Illinois, are not suitable for use as a

stand-by reserve, and that petitioner should be authorized to discontinue the operation of the said plants and to abandon the same at the time of the changeover from manufactured to natural gas, and to amortize the loss resulting from such abandonment in the manner, to the extent, and upon the conditions herein elsewhere specified; (i) that it is not necessary, prior to the disposition of the matters herein presented, to pass upon the amounts involved in the entries proposed to be made by petitioner pursuant to paragraph 7 of its petition, as long as petitioner will follow the accounting as set forth in paragraph 6 herein in accordance with the Uniform System of Accounts prescribed by this Commission; provided that the action herein taken shall not be interpreted as approval of the amounts recorded by petitioner, the Commission reserving the right to make such review and investigation or reviews and investigations as the Commission may at any future time find appropriate, and that after a hearing held upon due notice, at which petitioner shall have the right to cross-examine the witnesses for the Commission and to present witnesses on its own behalf, the Commission may order such adjustment to the entries herein approved or directed to be made as the Commission may then find warranted, including the requirement by the Commission that the petitioner will by affirmative evidence before the Commission maintain the burden of proof that the amounts recorded pursuant to authorization or direction herein are the amounts appropriate under the Uniform System of Accounts as promulgated; (j) that if the result of the entries appropriate to the retirement of the property herein required to be retired (estimated at $1,283,799) including the cost of removal and salvage relating thereto (no estimate for which is now available) shall result in a net charge to the Reserve for Depreciation in excess of the amount reasonably computed as being the accrued depreciation in the said Reserve for Depreciation (estimated at $646,961), petitioner may be authorized to transfer to Account 141—Extraordinary Property Losses —the amount of said excess reduced by the income tax savings related thereto as allowed by the Bureau of Internal Revenue (said allowance being estimated at $264,478) and may be authorized to amortize the amount so transferred (estimated at $372,360) over a period not exceeding ten years; and (k) that there is a situation of urgency for the changeover to natural gas in the territory here involved in order that adequate gas service be furnished the public, that the said changeover will result in material savings to the public in lower rates and that, subject to the modifications and terms provided in this order, the prayer of the said petition should be granted and that the public will be convenienced thereby.

It is therefore *ordered* by the Illinois Commerce Commission as follows:

A. That petitioner, Central Illinois Electric and Gas Company, be and it is hereby authorized to change the type and heating value of gas distributed in the cities of Rockford and Freeport and the village of Pecatonica in the state of Illinois and certain unincorporated territory adjacent to said

municipalities, as well as to certain consumers adjacent to a gas transmission line owned by petitioner and extending from Rockford to Freeport, Illinois (exclusive of the so-called District No. 1 in the city of Rockford wherein natural gas is now being distributed), from manufactured gas having an average heating value of approximately 565 British thermal units per cubic foot to straight natural gas having a heating value of approximately 1,000 British thermal units per cubic foot, said heating value of approximately 1,000 British thermal units per cubic foot to continue in effect unless and until otherwise ordered by this Commission, and that natural gas as herein authorized to be distributed shall, when it is tested in a place where it is consumed, have a monthly average heating value of not less than 1,000 British thermal units per cubic foot and that at no time shall the total heating value of such gas at such point be less than 950 British thermal units per cubic foot.

B. That petitioner be and it is hereby required, at its own expense, as soon as it starts the distribution in the above mentioned areas of natural gas having a heating value of approximately 1,000 British thermal units per cubic foot, to proceed with reasonable dispatch to make or cause to be made changes in or adjustments of the facilities and equipment used by its customers in the consumption of gas, to the end that the service rendered in the use of such gas having a heating value of approximately 1,000 British thermal units per cubic foot shall be at least as efficient as the service now being rendered by means of manufactured gas.

C. That the petitioner shall forthwith file a new schedule of rates for natural gas service in the aforesaid communities and territories, conforming to the requirements of finding (g) of this order, which rates shall become effective at the times and in the manner specified in said finding (g), and upon the same becoming effective the presently existing schedule of rates for manufactured gas service in the said communities and territories (and for natural gas service in said District No. 1 in Rockford) shall be cancelled.

D. That petitioner be and it is hereby authorized, upon substitution of natural gas for manufactured gas in the areas aforesaid, to discontinue the operation of its coke oven plant located at Rockford, Illinois, and to abandon the said coke oven plant as well as the water gas plant of petitioner located at Freeport, Illinois, and to amortize the loss resulting from such abandonment in the manner, to the extent, and upon the conditions specified in this order, particularly in the next succeeding paragraph hereof.

E. That, subject to the qualifications in finding (i) reserved, petitioner be, and it is hereby, authorized and directed to transfer the excess of the original cost of the property retired in connection with the subject matter of this proceeding plus the related cost of removal and less the related salvage, over the amounts recorded in the Reserve for Depreciation with respect to the property involved, after such excess has been reduced by the amount of income tax savings resulting from the consummation of the matters herein proposed, to Account 141—Extraordinary Property Losses

—and to amortize the same over a period not exceeding ten years.

F. That petitioner shall notify the Commission in writing of the date on which the change from manufactured gas to natural gas is made in each of the cities and other areas hereinabove mentioned, within five days of the date on which such change is completed in each case.

G. That within sixty days after completion of the accounting adjustments contemplated under paragraph 6 of this order, petitioner shall make a verified report, in duplicate, to the Commission, which report shall be signed and verified by an executive officer of the petitioner having knowledge of the facts, showing in reasonable detail the adjustments made in its accounts and the entries made in its books responsive to the provisions of this order.

UNITED STATES DISTRICT COURT, S. D. INDIANA, INDIANAPOLIS DIVISION

Chester Bowles, Price Administrator

v.

Indianapolis Railways, Incorporated

Civ. A No. 1074
64 F Supp 865
January 4, 1946

ACTION *by Federal Price Administrator against street railway and bus company for a temporary injunction restraining the company from charging fares in excess of those in force on September 15, 1942; denied.*

Rates, § 32 — Commission authority — Investigatory powers — Requirement of reasonableness.

1. The Commission is charged with the duty of approving schedules of rates for all public utilities, including street railway companies, and may proceed on its own motion or on the petition of the utility or any other person authorized to begin an investigation and must approve rates fair not only to the public but to the utility as well, p. 117.

Commissions, § 11 — Investigatory powers — Ascertainment of public need.

2. Administrative tribunals, such as Public Service Commissions, have power themselves to initiate inquiry, or, when their authority is invoked, to control the range of investigation in ascertaining what is to satisfy the requirements of public interest in relation to the needs of vast regions and sometimes the whole nation in the enjoyment of facilities for transportation, communication, and other essential public services, p. 117.

Commissions, § 46 — Change of personnel — Validity of order.

3. The fact that the personnel of a Commission has completely changed during the progress of an investigation in no manner affects the validity of a Commission order, p. 117.

Rates, § 190 — Presumption of validity.

4. A Commission rate order, being the product of expert judgment, carries a presumption of validity, p. 119.

Rates, § 44.1 — Jurisdiction of Commission — Notice to Office of Price Administration.

5. Notice to the Office of Price Adminstration or inquiry as to whether notice has been given is not essential to the jurisdiction of a state Commission to make an order approving a new rate schedule, p. 120.

Rates, § 649 — Lack of notice to Office of Price Administration — Effect on validity of order.

6. The fact that a state Commission believed that new street car rates were not a general increase and that, therefore, no notice to the Office of Price Administration was necessary and none was given, does not of itself make the Commission order a nullity, p. 120.

Appeal and review, § 14 — Validity of Commission order — Attack in collateral proceeding.

7. The Commission, having acquired jurisdiction of a proceeding involving rates for a street railway and bus system, may make a valid order in regard thereto which cannot be attacked in any proceeding to which the Commission and its members have not been made parties, p. 120.

Injunction, § 27 — Rates — Intervention by Federal Price Administrator — Proof required to enjoin enforcement of new rate schedule.

8. The Federal Price Administrator, to obtain an injunction against the enforcement of a Commission order, obtained without notice to him, approving a new rate schedule for a street railway company, must prove that the public will suffer irreparable injury and that the efforts of the United States to control inflation in a period of extreme emergency will also suffer irreparable injury, p. 121.

Injunction, § 13 — New rate schedule — Lack of notice to Federal Price Administrator — Proper procedure for Administrator to follow.

9. The Federal Price Administrator, on being denied notice of a hearing on a new rate schedule for a street railway and bus company, should not seek to enjoin the enforcement of the Commission order approving the schedule where it appeared to be temporary in character, but should seek to intervene in pending rate proceedings on the Commission's terms, p. 121.

Rates, § 72.1 — Commission jurisdiction — Effect of Stabilization Act.

10. The responsibility for establishing the rates of an intrastate utility rests solely with the rate-making body of the state and has not been shifted to the Office of Price Administration or the courts by the Stabilization Act, p. 121.

Rates, § 44.1 — Commission's authority — Lack of notice to Federal Price Administrator — New rates uniform and nondiscriminatory.

11. A new schedule of rates for an intrastate street railway and bus company can be considered by the Commission without notice to the Federal Price Administrator where the rates are uniform and nondiscriminatory, p. 122.

APPEARANCES: Addison M. Dowling, of Indianapolis, Ind., for plaintiff; Gilliom, Armstrong & Gilliom, Albert M. Campbell, and Thompson, O'Neal & Smith, all of Indianapolis, Ind., for defendant.

BALTZELL, DJ: On December 21, 1945, plaintiff filed a complaint in this court praying for a temporary injunction against the defendant "from charging or collecting any fare in excess of the fares in force on September 15, 1942 . . . unless and until the Public Service Commission of Indiana has held a hearing on the consideration of the defendant's increase of such fares at which plaintiff will have an opportunity to intervene and has entered an order permitting such increase in accordance with the provisions of the Public Service Commission Act of Indiana and the Stabilization Act of 1942." The complaint also asks for a permanent injunction upon final hearing.

A hearing was had upon the motion for a temporary injunction, and the facts upon the hearing were stipulated, so there is no controversy at this time as to the facts.

The facts are that the plaintiff is the duly appointed and acting Administrator of the Office of Price Administration and has been at all times with which we are here concerned, and, as such, has authority to institute this action; that the defendant is an Indiana corporation engaged as a common carrier in the carriage of passengers for hire within metropolitan Indianapolis, Indiana; that in the conduct of its business as a common carrier it operates streetcars, trackless trolley and motorbusses. It is a public utility and, as such, is under the laws of Indiana, subject to the supervision of the Public Service Commission of Indiana in so far as its schedule of rates is concerned. Its operations are wholly intrastate and are confined to the city of Indianapolis and suburban territory contiguous thereto located wholly within Marion county, and may be said to be a local mass transportation system. In other words, it operates a transportation system for the general public, and its means of transportation consist of street cars, trackless trolleys and motorbusses. Its vehicles, whether cars, trolleys, or busses, are operated as a system, and the schedules are arranged for the convenience of the traveling public, both as to the places where passengers may enter and leave the vehicles, and as to convenience in the use of transfers which are issued to its passengers. It is, as heretofore stated, a mass transportation in which each of the three means of transportation is an integral part. No one of the three means of transportation serves exclusively any certain section of the city or suburban district or any class of individuals. Each serves those who care to take advantage of its service.

The Public Service Commission, which is charged by law with the fixing of rates of public utilities in Indiana including street transportation systems, of its own motion began an investigation of defendant's rates on December 10, 1943. Numerous hearings were had by the Commission extending over a period of more than eighteen months, in which hearings the Public Counselor for Indiana, as pro-

vided by law and representing the traveling public, appeared and introduced evidence. Finally, on September 5, 1945, the Commission entered an order approving a schedule of rates for defendant which were temporary for a trial period of ninety days and to take effect on September 15th. Notice of the several hearings was given by publication in the newspapers of Indianapolis. The new schedule of rates became effective by order of the Public Service Commission of Indiana as of September 15th, but no notice was given by the defendant to plaintiff of the new rate schedule. Plaintiff complains of the failure on the part of the defendant to give him notice which he says was required under the Stabilization Act of 1942, 50 USCA Appendix, § 961 et seq. The new schedule of rates is now in effect, and defendant has a petition pending before the Public Service Commission to make such rates permanent, which petition is assigned for hearing before the Commission on January 7 and 21, 1946. Plaintiff was served with notice on November 30th by defendant of the filing of such petition and has appeared specially before the Commission in that proceeding.

The Stabilization Act of 1942 provides, in part: "That no common carrier or other public utility shall make any general increase in its rates or charges which were in effect on September 15, 1942, unless it first gives thirty days notice to the President, or such agency as he may designate, and consents to the timely intervention by such agency before the Federal, state, or municipal authority having jurisdiction to consider such increase." 50 USCA Appendix, § 961. Plaintiff is the person designated by the President to receive notice under the above statute. Referring to this statute, Procedural Regulation No. 11, § 1300.901 defines a general increase in rates or charges "as any change in its rates, fares, classifications, rules, regulations, or practices which results in an increase in the charges for transportation . . . applicable to a *class of passengers* . . . as distinguished from an increase of rates or charges applicable to a *particular customer*. . . ." (Our italics.)

There is no contention on the part of defendant that it gave any notice to plaintiff before putting into effect the new schedule of rates on September 15th; in fact, it admits that no such notice was given. It is its contention that no such notice was required because "it renders but one kind of service to but one kind of passengers irrespective of types of vehicles used or of points of embarkation or debarkation, and that the whole riding public which it serves constitutes but one single class of passengers for which uniform rates and charges contained in said new schedule were fixed by the Commission, and that said new schedule of rates and charges does not constitute a general increase in the rates for such class." On the other hand, the plaintiff "contends that the service rendered by defendant to streetcar and trackless trolley car passengers is a service to a separate class and that the rates and charges provided in said new schedule for the service rendered to them constitutes a general increase in rates of such class of passengers."

[1–3] Under the law of Indiana,

Burns' Ann Stat § 54–101 et seq., the Public Service Commission is charged with the duty of approving schedules of rates for all public utilities, including street railway companies. As such Commission it may proceed to examine rates upon its own motion or upon petition of the utility, or any other person authorized to begin an investigation. Its duty is to see that rates are approved that are fair not only to the pubic that uses the services of the utility but to the utility, as well. As was said by the Supreme Court, in speaking of administrative tribunals such as the Public Service Commission, they "have power themselves to initiate inquiry, or, when their authority is invoked, to control the range of investigation in ascertaining what is to satisfy the requirements of the public interest in relation to the needs of vast regions and sometimes the whole nation in the enjoyment of facilities for transportation, communciation and other essential public services." Federal Communications Commission v. Pottsville Broadcasting Co. (1940) 309 US 134, 84 L ed 656, 33 PUR (NS) 75, 80, 60 S Ct 437, 441. See, also, Interstate Commerce Commission v. Jersey City (1944) 322 US 503, 88 L ed 1420, 53 PUR(NS) 257, 64 S Ct 1129. Acting upon this authority, the Indiana Commission did, as heretofore observed, begin an investigation in December, 1943, looking to a determination of the question as to whether the schedule of rates of defendant then in effect was a fair schedule from the standpoint of both the public and the defendant. Numerous hearings were had during the following eighteen months and, as a result, the Commission entered the order heretofore referred to. True, the personnel of the Commission had completely changed during the progress of the investigation and hearings, but that, in no manner, affected the validity of the order entered on September 5th. It must be presumed that the Commission, acting as an administrative body regardless of the personnel comprising that body, acted wisely and justly as it construed the facts in the interest of all concerned. The finding and order was entered a few weeks subsequent to the cessation of hostilities. The order was concurred in by the entire membership of the Commission and certain findings of fact were made by the Commission in the entry before the formal entry of the final order. The Commission found that:

"This proceeding was instituted on December 10, 1943 by the Commission on its own motion for the investigation of the rates and charges of Indianapolis Railways, Incorporated. None of the present members of the Commission were members of the Commission at the time the proceeding was instituted, nor was the present public counsellor an incumbent of that office at that time. The Commission as previously constituted heard some evidence which was presented by previous public counsellors. The proceeding was brought largely on the basis of wartime operating conditions, which will no longer obtain since actual hostilities have ceased.

"On September 5, 1945 Indianapolis Railways, Incorporated, filed with the Commission, in its tariff department, a schedule of proposed

uniform fares and charges, with September 15, 1945, as their effective date, subject to approval of the Commission. On the same day the company filed with the Commission a written proposal for the settlement of this proceeding by the cancellation of its rate schedules now on file in the tariff department of the Commission and by the substitution therefor of said schedule of uniform rates for a trial period of three months from September 15, 1945."

Here follows the proposed schedule of rates. The Commission further found:

"An examination of the record in this proceeding discloses that one point of investigation was whether the company's rates should be uniform with respect to all types of vehicles operated by it. The proposed schedule provides for such uniformity.

"The Commission finds that if the riders take advantage of the token fares provided in the proposed schedule for transportation on all types of vehicles a substantial saving will on the whole result to the riding public as against the fares and charges provided in the company's existing schedules now on file with the Commission.

"The Commission finds that it is in the public interest that this proceeding under the above entitled cause be in all things terminated and that the said proposed schedule of uniform rates and charges be approved by the Commission to be effective on and after September 15, 1945, for a trial period of three months and until otherwise ordered by the Commission."

The pertinent part of the order follows: "It is therefore *ordered* by the Public Service Commission of Indiana that this proceeding under the above-entitled cause be and hereby is in all things terminated; that the existing schedules of fares and charges of Indianapolis Railways, Incorporated, now on file with the Commission are hereby canceled as of 12:01 A. M., September 15, 1945; and that the aforesaid schedule of uniform rates and charges be and hereby is approved, effective on and after 12:01 A. M., September 15, 1945 for a period of three months from said date and until otherwise ordered by the Commission."

It will be noted that the Commission found as a fact that the schedule of rates approved by it in such order provides uniformity as to rates regardless of the vehicle used. It also found that if the riders purchase tokens as provided in the schedule "a substantial saving will on the whole result to the riding public as against the fares and charges provided in the company's existing schedule now on file with the Commission." Furthermore, "that it is in the public interest that . . . the said proposed schedule of uniform rates and charges be approved. . . ." It is apparent that the Commission considered that defendant was serving one class only, namely, the riding public of Indianapolis and Marion county, and that the new schedule would not be discriminatory as was the old schedule, and that it would provide a saving to the riding public if advantage was taken of the use of tokens, etc.

[4] While the order of the Commission is not under direct attack, yet it must, in effect, be set aside if the

relief sought by plaintiff is granted. The only schedule of rates in existence is that now being charged which was approved by the Commission on September 5th. An injunction prohibiting the charging of those rates would, in effect, set aside the only order of the Commission now existing approving a rate schedule, as the former schedule was, by such order, canceled as of 12:01 A. M. on September 15th. The validity of the order of the Commission is not challenged in this proceeding, but if it were challenged, the Supreme Court has very clearly answered that challenge in the case of Interstate Commerce Commission v. Jersey City, *supra,* wherein it said [322 US at p. 512, 53 PUR (NS) at p. 263]: " 'Moreover, the Commission's order does not become suspect by reason of the fact that it is challenged. It is the product of expert judgment which carries a presumption of validity. And he who would upset the rate order under the act carries the heavy burden of making a convincing showing that it is invalid because it is unjust and unreasonable in its consequences.' Federal Power Commission v. Hope Nat. Gas Co. (1944) 320 US 591, 602, 88 L ed 333, 51 PUR(NS) 193, 200, 64 S Ct 281, 288. The Commission considered that it had, and we find no reason to doubt that it had, the evidence before it that was needful to the discharge of its duty to the public and to the regulated railroad."

[5–7] There is no provision in the law which requires the Commission to either notify plaintiff before entering an order approving a schedule of rates or to even make inquiry as to whether such notice was given by defendant. That is not essential to its jurisdiction. Plaintiff, however, contends in his brief that "since there was no compliance with the requirements of a plenary Federal statute, the Commission's order approving the rates was a nullity," which means in law a void act or an act having no legal force or validity—invalid—null. That is simply another way of saying that the order of the Commission which was its act in approving the present schedule of rates is invalid and has no legal force because notice was not served upon it by defendant thirty days before the schedule of rates became effective under the order. The defendant had the responsibility of determining for itself whether or not the new schedule was a general increase as provided in the Stabilization Act, and whether notice was necessary. The fact that it believed that such rates were not a general increase and that, therefore, no notice was necessary, and none was given, does not, of itself, make the order of the Commission a nullity or invalid, as plaintiff contends. The Commission, having acquired jurisdiction, its order is valid. Furthermore, such order is not attacked in this proceeding and cannot be, unless the Commission and its members are made parties thereto. Indianapolis Water Co. v. Moynahan Properties Co. (1935) 209 Ind 453, 12 PUR(NS) 209, 198 NE 312; Re Engelhard & Sons Co. (1914) 231 US 646, 58 L ed 416, 34 S Ct 258. The Stabilization Act is intended to aid in the prosecution of the war and to prevent inflation. Active hostilities have ended; its object now is to curb and prevent inflation.

[8–10] Before an injunction can issue in this case, the plaintiff must prove that the public will suffer irreparable injury, and that the efforts of the United States to control inflation in this period of extreme emergency will also suffer irreparable injury, as charged in the complaint, unless defendant is enjoined from further collecting the rates as provided in the schedule approved by the Public Service Commission on September 5th. This burden he has not met. No irreparable injury will result to the public or to the United States in its effort to control inflation if the injunction is denied. Plaintiff may pursue the remedy now open to him by intervening in the proceeding pending before the Public Service Commission, if permitted by that body to do so, in which proceeding he has appeared. The Commission may permit him to intervene upon such terms as it may impose. If permitted, he may present such evidence as he may possess upon those subjects, that is, the effect of continuing the present schedule of rates upon the public and upon the United States in its effort to control inflation. It is apparent that the Commission's order complained of is only temporary in character, adopted for the purpose of ascertaining the effect thereof as applied to the economic condition immediately following the cessation of hostilities, and it may be that the Commission, in the hearings now scheduled before it will be impressed with evidence which may be presented to it by the plaintiff to such an extent that it will feel that justice requires an adjustment of the rates now in effect. Acker v. United States, (1936) 298 US 426, 80 L ed 1257, 56 S Ct 824. However, that is the responsibility of the rate-making body, the Public Service Commission of Indiana, and not of this court. Neither this court nor the plaintiff can fix rates for a public utility. That responsibility rests solely with the rate-making body of the state if the utility does only intrastate business, as provided by the law of that state. As said by Justice Roberts, in the case of Vinson v. Washington Gas Light Co. (1944) 321 US 489, 497, 88 L ed 883, 52 PUR(NS) 257, 64 S Ct 731, 735. "And, as we have noted, the Stabilization Act of October 2, 1942, did not alter this prohibition but required merely that no utility should generally increase rates in effect September 15, 1942, unless it first gave thirty days' notice to the president or his representative and consented to the timely intervention of that representative before the Federal, state, or municipal authority having jurisdiction to consider the increase. . . ." This court will presume that the Commission will act wisely in the interest of the public and of the United States in its effort to control inflation.

It has been heretofore observed that there is *one* legal schedule of rates only in effect and that schedule applies equally to every person using the transportation vehicles of defendant wherever they may live, wherever their destination if within the territory served by defendant's system. Those rates are also uniform. No discrimination is shown. They are fixed in a valid order of the Public Service Commission of Indiana. The rider may use any vehicle he desires and pay the same rate. There are many in-

stances where the same individual uses all three vehicles in making one trip. He may ride a feeder bus, transfer to a streetcar and then continue by trackless trolley to his destination. The various lines of transportation of defendant permeate all parts of Indianapolis and Marion county. No certain type of vehicle serves any particular community or section exclusively but, as a single unit, the three types serve the public—a single class.

The case of Henderson v. Washington, M. & A. Motor Lines (1942) 77 US App DC 26, 46 PUR(NS) 193, 132 F2d 729, is to be distinguished from this case. In that case, the increase was apparent and applied to one line only, operating in interstate commerce. It did not apply to a situation where three types of vehicles are used to serve the same individuals in the same locality at a uniform rate. It is apparent that, in the Marlboro Case [cited above], there was discrimination and an increase affecting but one class.

[11] There being a valid schedule of rates charged by defendant approved by the Public Service Commission of Indiana, the only regulatory body having authority to approve rates and those rates being uniform to all passengers using defendant's system of transportation regardless of the type of vehicle used—a single class of passengers—there was no necessity for defendant to notify plaintiff of the proposed new schedule before it became effective. No notice being required, the plaintiff has no cause to complain.

The temporary injunction will be denied.

WISCONSIN PUBLIC SERVICE COMMISSION

Re Wisconsin Public Service Corporation

CA–2254
May 24, 1946

PETITION *by landowners for revocation or suspension of certificate authorizing construction of transmission line and request for hearing with reference to route or location of line; dismissed for lack of jurisdiction.*

Eminent domain, § 3 — Jurisdiction of Commission — Transmission line route.

1. Chapter 32, Wisconsin Statutes, granting to public utility corporations the power to exercise the right of eminent domain for the construction of an electric transmission line does not subject such right of eminent domain to the consent, approval, or other action of the Commission, p. 124.

Certificates of convenience and necessity, § 88 — What public convenience and necessity must be considered.

2. The public convenience and necessity which the Commission is required

to consider in granting a certificate authorizing the construction of a transmission line is the convenience and necessity of the persons served by the electric company as a public utility and relates solely to requirements for adequate service at reasonable rates, p. 124.

Certificates of convenience and necessity, § 88 — Private or public needs.

3. The convenience and necessity involved when landowners object to the location or route of a transmission line for which a certificate has been obtained from the Commission is purely private in nature and is not sufficient to constitute or present a question of public convenience and necessity, p. 124.

Certificates of convenience and necessity, § 21 — Jurisdiction of Commission — Route of transmission line.

4. The Commission lacks jurisdiction to modify or restrict the rights and powers conferred upon an electric company by statutes granting the right of eminent domain and, therefore, cannot entertain a petition by landowners seeking a relocation of a route for a transmission line for which the Commission has granted a certificate of convenience and necessity, p. 124.

By the COMMISSION: On or about May 15, 1946, a petition was filed with the Commission signed by Orin C. Ulness and fifteen other residents of the towns of Liberty and Eaton in Manitowoc county requesting that the Commission temporarily revoke or suspend the certificate previously granted herein to the Wisconsin Public Service Corporation authorizing the construction of a transmission line between Valders and New Holstein in said Manitowoc county; and also requesting that the Commission require said Wisconsin Public Service Corporation to submit detailed plans and specifications showing the location of the proposed transmission line, and that the Commission hold a public hearing with reference to the route or location of said line.

In support of this petition the petitioners allege, in substance, that they are farmers and owners of the land over which it is now proposed by Wisconsin Public Service Corporation to construct the transmission line; that while some of the petitioners have granted options or easements granting the right to construct the line over their land, they prefer to have the line located otherwise than as proposed, and other petitioners who have signed no such options or easements also desire a relocation of said transmission line, to the end generally that the line may not cross their fields but should be confined to a route along section lines and town roads or Federal highways so as not to injure or damage their property. The petition does not allege that the cost to the Wisconsin Public Service Corporation of the right of way for its transmission line will be any less than if it is located otherwise than upon the proposed route.

It appears from the petition that the Wisconsin Public Service Corporation has instituted proceedings in the county court for Manitowoc county for the condemnation of the lands or interests in lands necessary for the construction of its transmission line along the road as proposed by the corporation, and that such proceedings are pending.

The petition makes it clear that what the petitioners request the Commission to do is to pass upon the public convenience or necessity for the proposed route of the transmission line, and to find that public convenience and necessity does not require the location of this line in the particular route as proposed by the Wisconsin Public Service Corporation.

[1] Under the provisions of Chap 32, Wisconsin Statutes, the Wisconsin Public Service Corporation, as a public utility corporation of this state, is granted the power to exercise the right of eminent domain for the construction of an electric transmission line, and under the provisions of § 32.07, Statutes, it is given the authority to determine for itself the necessity for the taking of such property as it deems may be required for the construction of such transmission line. Nowhere in Chap 32 of the Statutes is there any intimation that the right of a public utility corporation to determine for itself the necessity for the taking of property which it seeks to condemn is to be subjected to the consent, approval, or other action by this Commission.

[2–4] The certificate previously granted by this Commission to Wisconsin Public Service Corporation authorizing the construction of the transmission line here involved was granted upon considerations of public convenience and necessity but, as we understand it, the public convenience and necessity thus under consideration by this Commission did not include the matters set forth in the petition relative to the location of the proposed transmission line except in so far as the location of such line might affect the cost of it. The public convenience and necessity which the Commission is required to consider under the provisions of § 196.49, Statutes (pursuant to which the certificate of authority above referred to was granted), is the convenience and necessity of the persons served by Wisconsin Public Service Corporation as a public utility of this state and relates solely to the requirements for the adequate rendition of that service at reasonable rates.

The petition urges that the proposed location of the transmission line by Wisconsin Public Service Corporation affects the convenience and necessity of the petitioners. This may be true, but as far as the petition shows, the convenience and necessity thus involved is purely private in nature and is not sufficient to constitute or present a question of public convenience and necessity.

In view of the foregoing we do not see how the Commission could entertain the petition as filed or assume jurisdiction of any matter in controversy thereby presented without exceeding its powers and without, in effect, attempting to amend the statutes of this state which vest certain rights and powers in the Wisconsin Public Service Corporation which the Commission is not authorized to modify or restrict.

ORDER

It is therefore *ordered:*

That the petition above referred to be and is hereby dismissed for lack of jurisdiction of the subject matter presented therein.

LOUISIANA PUBLIC SERVICE COMMISSION

South Louisiana Electric Cooperative Association

v.

Louisiana Power & Light Company

No. 4222, Order No. 4335
May 23, 1946

PROCEEDING *by electric coöperative to obtain order directing power and light company to sell it wholesale electric power; hearing ordered.*

Public utilities, § 56 — Utility status of municipality rendering electric service.

1. A municipality which furnishes power to an electric coöperative is an electric public utility within the meaning of a statute prohibiting an electric utility from extending service, without a certificate, to customers receiving service from another utility, p. 126.

Parties, § 18 — City as intervenor — Coöperative's application for wholesale power.

2. A municipality, having been declared a public utility within the meaning of a statute restricting one utility from extending service to the customers of another electric utility, may intervene at a hearing on the application of a customer electric coöperative to require another utility to sell it wholesale power, p. 126.

By the COMMISSION: In this proceeding the South Louisiana Electric Cooperative Association, domiciled at Houma, Louisiana, seeks an order of the Commission directing the Louisiana Power & Light Company to sell to it wholesale electric power from a 33 kilowatt hour transmission line owned by the latter company in the vicinity of Houma. The cooperative, as alleged in its petition, is presently purchasing power from the city of Houma at a price of 12.32 mills per kilowatt hour, and contends that under the defendant's published tariff it could purchase such power from defendant at 8.3 mills per kilowatt hour.

Defendant has not agreed to sell power to the complainant, and contends that in view of the Act No. 254 of 1936, which provides that "no electric public utility shall render or extend its electric services or facilities to customers already receiving electric service from another electric public utility without first obtaining a certificate of public convenience and necessity from the Louisiana Public Service Commission," it cannot now legally do so without specific authority of the Commission because of the fact that complainant is being presently served by the city of Houma. Complainant contends that the act is in-

applicable because the city of Houma is not an "electric public utility" within the meaning of the act.

The city of Houma filed a petition of intervention seeking to become a party to this proceeding and to unite with defendant in resisting the original complaint of the coöperative.

Defendant filed answer to the complaint, which answer is for the most part a general denial, and also filed exceptions of no right of action and of no cause of action. Complainant filed exceptions of no right of action, no cause of action, misjoinder and estoppel to the intervention of the city of Houma.

Argument was heard upon the exceptions at regular session of the Commission held at Baton Rouge, Louisiana, on January 15, 1946, and briefs have been filed by the parties.

[1, 2] The matter came up for ruling upon the exceptions at a business and executive session of the Commission held at Baton Rouge on May 21, 1946, and after full consideration, it is the opinion of the Commission that (a) South Louisiana Electric Cooperative Association, complainant herein, as a purchaser of electric power in Louisiana, has a right and cause of action; (b) that the city of Houma, as an "agency furnishing electric service within the state of Louisiana" is entitled to intervene herein and that the terms and provisions of Act No. 254 of 1936 are applicable to it. Pursuant to these conclusions, it is

Ordered, that all exceptions filed by complainant and defendent, hereinabove described, be and the same are hereby overruled, and that the intervention herein of the city of Houma be and the same is hereby authorized; and it is *further,*

Ordered, that this proceeding be set for hearing upon the merits at a regular session of the Commission, the date and place of which will be hereafter fixed.

WASHINGTON DEPARTMENT OF TRANSPORTATION

Re George Kress et al.

Order M. V. No. 44336, Hearing No. 3763
April 26, 1946

APPLICATION *for authority to transfer common motor carrier permit; denied.*

Certificates of convenience and necessity, § 143 — Transfer of certificate — Dual private and common carrier operation.

Authority to transfer a common motor carrier permit should be denied where the proposed transferee intends to furnish a U-Drive Service in conjunction with his common carrier operation, since such dual operation provides the means for such common carrier to engage in "unfair and destructive competitive practices," and it also gives that carrier "undue prefer-

ence or advantage" over other common carriers and does not foster "sound economic conditions in such transportation among such carriers."

By the DEPARTMENT: This matter came on regularly for hearing at Seattle, Washington, at 4 P.M., January 24, 1946, pursuant to notice duly given, before Anne Marie Thompson, examiner; Earl R. Field, reporter.

The parties were represented as follows:

Applicants: R. T. More, Partner, Port Orchard, for George Kress and R. T. More, d/b/a Kress Trucking Co., Port Orchard, and Frank A. Oliver, owner, for Oliver's U-Drive & Transfer Co., Bremerton.

Protestants: Black Ball Freight Service, by D. C. Nelson, Operating Manager, Seattle, and Thomas A. Folger, by Thomas A. Williams, Attorney, Seattle.

Protestant and Intervenor: Black Ball Freight Service, by H. D. Williams, Traffic Advisor, Seattle, protestant, and Sexton Auto Freight and Tacoma-Bremerton Auto Freight, by H. D. Williams, Traffic Advisor, Seattle, Intervenors.

Intervenors: Tacoma-Bremerton Auto Freight, Tacoma, by Clifford Clarke, Owner, and Sexton Auto Freight Co., Bremerton, by J. C. Sexton, Owner.

History of Proceeding

On November 19, 1945, George Kress and R. T. More, d/b/a Kress Trucking Co. and Frank A. Oliver, d/b/a Oliver's U-Drive & Transfer, made joint application to the Department for transfer of common carrier Permit No. 8788 from George Kress and R. T. More, d/b/a Kress Trucking Co., to Frank A. Oliver, d/b/a Oliver's U-Drive & Transfer in accordance with Rule 21 of the rules and regulations governing motor freight carriers. The matter was docketed by the Department and the application for transfer was duly protested by Black Ball Freight Service, D. C. Nelson, operating manager, 104 Colman Dock, Seattle, Washington, and Thomas A. Folger, by Thomas A. Williams, Attorney, 1210 American Building, Seattle, Washington. R. T. More and Frank A. Oliver testified for applicants. Protestants offered no testimony. Protestants' Exhibit No. 1, Bremerton Telephone Directory, was introduced. The Department being fully advised in the premises makes and enters the following findings of fact and order:

Findings of Fact

By this application, George Kress and R. T. More, transferors herein, seek to transfer to Frank A. Oliver, transferee herein, common carrier Permit No. 8788. It is obvious that the rights contained in the said permit which are most desired by transferee are the rights as a carrier of household goods. There is no doubt but what transferee is financially able and properly and adequately equipped to conduct the proposed service. Transferee owns eighteen or nineteen pieces of equipment besides the eight pieces of equipment he acquired from transferors. Apparently, the sale of transferors' equipment to transferee has been consummated and is in no way conditioned upon the transfer of transferors' common carrier permit.

If this is the fact, then there are no property rights involved which is a prerequisite to the jurisdiction of the Department to grant a transfer. However, because of the disposition which is made of the application on other grounds, we will assume that we have jurisdiction. Transferee has been the operator of a number of trucks which he has rented out at times on leases and in other instances on an hourly rate.

Protestant's Exhibit No. 1, being a telephone directory of Bremerton and vicinity, shows an advertisement by transferee offering all types of carrier equipment for rental with an inducement to prospective customers to "Save Half." We cannot but conclude that the inducement means to "Save Half" of the common carrier rates. Transferee intends to continue his U-Drive Service on a rental basis if this transfer of permit is granted. The equipment which transferee licenses with the Department in the event that the transfer is granted will, of course, haul only for the established tariff rates promulgated by the Department of Transportation. However, if a prospective shipper were dissatisfied with or refused to pay the scheduled common carrier rates for the movement of his goods, transferee would then be in a position to offer the shipper a piece of equipment from his U-Drive stock. Transferee admits that this would probably be the situation since if some one desired to rent a piece of his U-Drive equipment, it would not be his business to inquire the use to which the rented piece of equipment would be put. Transferee has no knowledge of or familiarity with the rules and regulations governing motor freight carriers promulgated by the Department of Transportation.

Section 1 of Chap 184 of the Laws of 1935, as amended, sets out, among others, the following reasons for the enactment of the act:

". . . that the shippers of the state may be provided with a stabilized service and rate structure; that sound economic conditions in such transportation and *among such carriers* may be fostered in the public interest; that adequate, economical, and efficient service by motor carriers, and reasonable charges therefor, without unjust discrimination, undue preferences or advantages, or unfair or destructive competitive practices may be promoted;"

The contemplated operations of the transferee herein clearly violate both the spirit and the letter of § 1 of Chap 184 of the Laws of 1935. For a common carrier to operate in conjunction with his common carrier operations a U-Drive Service, certainly provides the means for such common carrier to engage in "unfair and destructive competitive practices" as well as giving that common carrier an "undue preference or advantage" over other common carriers and will not foster "sound economic conditions in such transportation among such carriers." Based on such considerations, we find that to grant this application would definitely not be in the interest of the shipping public and would certainly tend to impair or unreasonably endanger the stability and dependability of existing essential service, and therefore in the exercise of our discretion we must deny the application for transfer.

Industrial Progress

A digest of information on new construction by privately managed utilities; similar information relating to government owned utilities; news concerning products, supplies and services offered by manufacturers; also notices of changes in personnel.

Pacific Gas & Electric Company Plans $19 Million Expansion

PACIFIC GAS & ELECTRIC COMPANY recently announced that it will spend $19 million in enlarging the power generating capacity of its Station P steam plant in San Francisco. Under plans made in 1941 but delayed by wartime shortages, two 100,500 hp turbine generators will be added to the plant's 62,997 hp capacity. Completion is expected late in 1948.

The additional generators will be installed in a new $1,870,000 building to be erected adjacent to the existing station near Hunter's Point. Power will be used to supplement hydroelectric output and augment stand-by capacity. The generators will be hydrogen-cooled. Steam will be provided by four outdoor boilers, each with a normal capacity of 450,000 pounds of steam an hour.

New "Protectograph" Has Many Improvements

GREATLY improved in operation over former models is the deluxe electric "Protectograph" checkwriter, according to The Todd Company, Rochester, New York, disbursement-equipment manufacturers.

Chiefly interesting to users, especially those living in humid or tropical climates, is the treatment and finish of all interior parts to resist rust and corrosion.

Other refinements are an improved ribbon reverse and control mechanism assuring trouble-free operation and uniform inking; an improved prefix word control and operating mechanism giving added disbursement safety; a smoother operating keyboard; improved checkholding levers; and stronger shafts, castings, and other operating parts to assure efficient operation and long life. Refinements also have been built into the zero-and-blank-stop mechanism which gives positive mechanical assurance that zeros will automatically drop into place in amounts like $100,000, $1,000,000, etc.

The Protectograph is supplied with a performance guarantee indemnifying users against losses which may result from alteration of amount lines written on the machine.

Dillon Supplies New Charts for Material Testing

A NEW and time-saving help in the calculations of material testing has been provided by the engineers of W. C. Dillon & Company, Inc., manufacturers of the Dillon Universal Tester, 5410 W. Harrison street, Chicago 44, Illinois. It is in the form of an attractive brochure, containing a complete set of tables showing factoring of specimen tests for every material. Copies may be had by addressing the manufacturer.

A-C Issues Handbook of Electrical Products

A 16-PAGE letter-sized briefed handbook of electrical products suitable for a wide variety of industries has been announced by the Allis-Chalmers Manufacturing Company, Milwaukee, Wisconsin.

Well illustrated, the handbook describes eight classifications of electrical equipment ranging from a-c and d-c motors of ½ to 50,000 hp to electronic heaters. For easy reference, the booklet tabulates characteristics of motors from ½ to 75 hp and describes the

(*Continued on page 26*)

construction and application of many types of motors built by Allis-Chalmers.

In connection with a description of the company's complete line of motor control equipment, the booklet offers data covering the type, maximum horsepower, volts, and description of its motor controls. Similarly, in describing its complete line of multiple V-belt drives of constant and variable speeds, a table provides at a quick glance information relative to the type of sheave, number of grooves, belt sizes and horsepower best fitted for a particular purpose.

The company's complete line of low and high voltage transformers, switchboards, switchgear and circuit breakers, equipment for power generation and centrifugal pumps, as well as water conditioning chemicals and equipment, is also graphically described. Included with the descriptive matter on switchgear is a handy tabulation of metalclad vertical lift switchgear data.

The handbook, B6452, is available on request from the Allis-Chalmers Mfg. Co., 655, Milwaukee 1, Wisconsin.

Catalog Describes Commercial Fluorescent Fixtures

ELEVEN standardized commercial fluorescent fixtures, suitable for lighting offices, stores, schools, institutions, drafting rooms, and laboratories, are described in a new "wrap-around" catalog packet just issued by Sylvania Electric Products Inc.

Specifications and installation data are given on the eleven basic Sylvania Electric models which can be installed in single or continuous rows through any one of four standard mounting arrangements. The easy maintenance features of not having to remove nuts or screws to relamp the fixtures and the simplicity with which the hinged louvers and glass diffusing panels can be swung open and lifted clear for cleaning are also explained in this material.

Robins Conveyors Move Philadelphia Office

ROBINS CONVEYORS, INC., Passaic, New Jersey, manufacturers of materials handling machinery, announces that its Philadelphia office, formerly at 12 South 12th street, will be consolidated with that of its parent organization, Hewitt-Robins Incorporated at 401 North Broad street, Philadelphia 8, Pennsylvania, effective September 1st.

Wheelco Issues Booklet Describing Pyrometers

WHEELCO INSTRUMENTS COMPANY has issued bulletin D602-4, which describes the company's complete line of portable pyrometers.

Copies may be obtained from the manufacturer, 847 W. Harrison street, Chicago 7, Illinois.

(*Continued on page* 28)

War Assets Administration Reads Pipe Line Bids

SIXTEEN proposals to buy or lease the Big and Little Big Inch Pipe Lines, which represent a Federal government investment of $146,000,000, were opened publicly and read July 31st by the War Assets Administration in Washington, D. C.

The offers follow:

John Bauer of the American Public Utilities Bureau, New York, New York, offered $70,000,000 for both lines, submitting the proposal in the name of the Preliminary Organizing Committee of a nonstock, coöperative to be known as the Mutual Oil-Gas Transmission Co. The Bauer plan would use the Big Inch for crude oil and the Little Big Inch for oil products transmission.

Big Inch Oil, Inc., New York, New York, offered $110,000,000 for both lines for petroleum services, $1,000,000 in escrow as a down payment when the sale is approved, $65,000,000 cash on sale closing-date and delivery to WAA of $44,000,000 in corporation income debentures. Charles H. Smith, president of Big Inch Oil, Inc., stated that his company planned to spend $20,000,000 for construction of a 20-inch pipe line from the West Texas fields to the western terminal of the Big Inch line. The firm would act as a common carrier, not engaged in producing, refining or marketing petroleum products.

Big Inch Natural Gas Transmission Co., Washington, D. C., offered $85,000,000 cash for the two lines, rights of ways and easements for the transmission of natural gas. This offer excluded all pumping stations, the oil tank farms and all feeder lines not suitable to natural gas transmission. The bid was signed by Robert J. Bulkley, as president, of the legal firm, Bulkley, Butler and Pillen of Washington and Cleveland.

W. Lee Clements, Barton, Arkansas, offered to create a marketing coöperative comprising producers and distributors of oil and/or natural gas and lease the Big and Little Big Inch lines for twenty-five years on a rental basis. The rental would be based on fixed charges per barrel of oil or per thousand cubic feet of natural gas. This offer outlined alternate plans for converting both lines to gas, keeping both lines in oil and keeping one line in oil, the other in gas.

J. W. Crotty and Associates, Dallas, Texas, offered to purchase the lines for a new natural gas corporation to be formed by Mr. Crotty, Dr. Charles A. Phol and H. R. Dillingham, both engineers, and Roy C. Coffee, attorney, Hart Willis, attorney, Oswin C. Rowbotham, attorney, and Britt E. Cranfill, oil and gas operator. The purchase price offered was $127,500,000, with $5,000,000 down and the balance in three years. Operation would be determined by the buyer with possible conversion of both lines to gas intimated.

John R. Moroney (Petroleum Royalty Corporation) Dallas, Texas, submitted a proposal for a group composed of himself, R. W. Fair, Tyler, Texas; Bert Aston, Roswell, New Mexico. They offered to lease the lines for thirty years at a rental of 15 percent of all gross income with the latter anticipated at $29,000,000 annually.

L. M. Glasco, Dallas, Texas, acting for a group of independent producers of Texas, including, besides the bidder, G. H. Vaughn, Walter W. Lechner, E. B. Germany and Angus G. Wynee, offered to lease the Little Big Inch line but remove it from its present location and relay it from a point in the Permian Basin in West Texas to California and operate it as a common carrier of crude petroleum. The group would form a corporation which would defray all operating and removing cost, but would require government financing to make possible its proposed 50-year lease.

Glenn H. McCarthy, of McCarthy Oil and Gas Corporation, Houston, Texas, offered to buy both lines for $80,000,000 paying $20,000,000 when the deal is consummated, $30,000,000 within three years thereafter and the remaining $30,000,000 within six years. Mr. McCarthy also stated he would pay the full $80,000,000 in cash if the Government so desired.

Frank M. McGraw, Anniston, Alabama, acting for himself and associates, offered to lease the two lines with an option to buy the facili-

(*Continued on page* 30)

ties at $146,000,000 less depreciation at 4 per cent per annum from the date of full operation. The lines would operate as a common carrier for oil.

Russell Palmer, New York, New York, and Washington, offered $135,000,000 for both lines to be used for oil transmission. An alternate offer was $115,000,000 for the lines if used for gas, the price to include all conversion costs. Mr. Palmer would form a company with $10,000,000 working capital.

E. Holley Poe, New York, New York, offered to buy both lines for $80,000,000 cash and pay the United States Government a bonus if gas transportation exceeds more than 120,000,000,000 cubic feet of gas a year, the bonus to be 5½ cents per thousand cubic feet in excess of the amount stipulated, bonus payment to continue until the United States had been paid $100,000,000 (this figure to include the original $80,000,000).

Ryford Pipe Line Co., Chicago, Illinois, offered to lease for oil operation and asked an option to buy the Big Inch for $40,000,000 and the Little Big Inch for $30,000,000.

Syndicated Industries, Inc., New York, New York, offered to lease with rental based on production: one-half cent per barrel of oil the rental applying on a purchase price to be fixed at a later date.

Sinclair Refining Co., New York, New York, did not make an offer for the two lines as such, the offer being only for branch lines in the New York-Philadelphia area to be bought on terms to be discussed later.

Trans-Continental Gas Pipe Line Co., Longview, Texas, would pay $85,000,000 for the two lines for gas use. If awarded only the Big Inch for $54,000,000, the company would be sold the Little Big Inch within a year for $30,000,000.

Noyack Oil Corporation, Tulsa, Oklahoma, and New York, New York, offered $80,000,000 for both lines to be used for oil. The payment would be made in first mortgage sinking fund bonds together with all Class A common stock which receives ⅓ of all dividends on all classes of stock. Alternate offers: to buy Big Inch for $40,000,000 on same terms or Little Big Inch for $40,000,000 on same terms and have the United States relocate the line to tap supply sources.

W. Stewart Clark Retires; Succeeded by Carl Lynge

THE retirement of W. Stewart Clark as manager of manufacturing for the General Electric Company's nationwide Appliance & Merchandise Department, and the appointment of Carl M. Lynge, general works manager of the G-E Bridgeport plant, to succeed him, was announced recently by H. L. Andrews, vice president of the company and general manager of the A & M Department.

Mr. Clark's retirement rounded out 47 years of active service with the Company, 26 of which were spent as executive head of the Bridgeport Works.

Mr. Lynge, who had already assumed part of Mr. Clark's duties on January 1st of this year when the latter relinquished the position of Bridgeport Works manager, will take over the complete responsibility for general manufacturing activities in all the A & M Department's plants throughout the country.

Construction Loans Announced

CONSTRUCTION loans—chiefly for distribution lines, system improvements or new or additional generating capacity — recently were made to the following enterprises by the Rural Electrification Administration:

Colquitt County Rural Electric Company, Moultrie, Ga., $814,000.

Southeastern Michigan Rural Electric Coöperative, Inc., Adrian, Mich., $120,000.

Clearwater-Polk Electric Coöperative, Inc., Bagley, Minn., a new coöperative, $325,000.

Pontotoc Electric Power Association, Pontotoc, Miss., $740,000.

Ozark Electric Coöperative, Mt. Vernon, Mo., $325,000.

Edgefield Electric Refrigeration Coöperative, Inc., Edgefield, S. C., $25,000.

Pedernales Electric Coöperative, Inc., of Johnson City, Tex., $620,000.

Lower Colorado River Electric Coöperative, Inc., Giddings, Tex., $485,000.

Excelsior Electric Membership Corporation, Metter, Ga., $358,000.

Tri-County Electric Coöperative, Inc., St. Matthews, S. C., $237,000.

Wyrulec Company, Lingle, Wyo., $367,600.

Florida Keys Electric Coöperative Association, Inc., Tavernier, Fla., $395,000.

Tombigbee Electric Coöperative, Guin, Ala., $771,000.

Allen-Wells County Rural Electric Membership Corporation, Ossian, Ind., $50,000.

Fleming-Mason Rural Electric Coöperative Corporation, Flemingsburg, Ky., $940,000.

Presque Isle County Rural Electric Coöperative Association, Onaway, Mich., $275,000.

Traverse Electric Coöperative, Inc., Wheaton, Minn., $800,000.

Northwest Electric Coöperative, Savannah, Mo., $208,000.

Park Electric Coöperative, Inc., Livingston, Mont., $175,000.

New Hampshire Electric Coöperative, Inc., Plymouth, N. H., $95,000.

Rutherford Electric Membership Corporation, Forest City, N. C., $235,000.

Clay-Union Electric Coöperation, Vermillion, S. D., $350,000.

Union County Power Company, Elk Point, S. D., $125,000.

Bowie-Cass Electric Coöperative, Douglassville, Tex., $507,000.

Low Pressure Evaporators

CONDENSER Service & Engineering Co., Inc., Hoboken, New Jersey, has issued a new catalog, which illustrates the Conseco line of low pressure evaporators and distillers for various industrial and marine applications. Advantages and economies of low pressure evaporation, and installation diagrams and cost data are shown.

PROFESSIONAL DIRECTORY

• This Directory is reserved for engineers, accountants, rate experts, consultants, and others equipped to serve utilities in all matters relating to rate questions, appraisals, valuations, special reports, investigations, financing, design, and construction.

PROFESSIONAL DIRECTORY *(continued)*

(Professional Directory Continued on Next Page)

PROFESSIONAL DIRECTORY *(concluded)*

PROFESSIONAL DIRECTORY (*concluded*)

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YOU CAN SELL THIS 3½ BILLION KW-HR LOAD

From 1926 to 1941, power companies lost a transit load of 3½ billion kw-hrs. But the outlook for regaining this load is so promising that it merits investigation and active promotion.

Consider the attractive transit potential in an average city of 200,000 population. One transit company could profitably operate 150 trolley coaches—a 27 million kw-hr load annually. This is equivalent to the power consumed by 108,000 refrigerators or 24,545 electric ranges. A large city of one million people could economically use 950 trolley coaches and 300 modern streetcars. This is a yearly consumption of 236.5 million kw-hrs—equivalent to that of 946,000 refrigerators.

In addition to a large bulk load, transit offers other attractive features: a 40 per cent load factor, off-peak maximum demands, and low sales cost per year. That's why far-sighted utility men are actively interested in regaining and stepping up transit power consumption.

The electrical industry has already succeeded in harnessing about 22 per cent of the lost 3½ billion kw-hrs. In 1945, transit companies purchased 2335 electric vehicles. The immediate plans of nearly 100 systems indicate 12,000 additional electrics will appear on America's streets w the next few years. Electri economical to operate and ferred by the public—that's an increasing number of tr companies, aided by centra tions, consider electrics thei modernization bet.

To determine the econom using rapid transit, PCC trolley coaches, or buses, a ough and open-minded stud traffic on each line must be r But for quickly estimating p vehicle application, the yard below will prove helpful.

Population of City	Electrics	Rub
100,000	40 plus	1
250,000	208 "	4
500,000	650 "	13
750,000	860 "	16
1,000,000	1330 "	18

Now—while plans fo mo izing rolling stock are swe through the transit industry— is the time for you to invest the application of load-bui electrics in your city. *Appe Dept., General Electric Comp Schenectady 5, New York.*

LIFESTREAM OF THE CITY, a new film
Power to America sound, color movie, presents the city traffic problem in a new light. You'll like it. It promotes electric transit and increased power consumption.
If you haven't yet seen it, ask your G-E representative to arrange for a showing.

GENERAL ELECTRI